August 27, 2019

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Otay Landfill, Inc.
ATTN: Managing Agent
1700 Maxwell Rd
Chula Vista, CA 91911

Otay Landfill, Inc.
ATTN: Managing Agent
8514 Mast Blvd.
Santee, CA 92071

SEP 04 2019

Republic Services, Inc.
ATTN: Managing Agent
1700 Maxwell Rd
Chula Vista, CA 91911

CT Corporation System
Registered agent for:
Republic Services, Inc.,
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Otay Landfill, Inc.
ATTN: Managing Agent
18500 North Allied Way
Phoenix, AZ 85054

Republic Services, Inc.
ATTN: Managing Agent
18500 North Allied Way
Phoenix, AZ 85054

Re: Notice of Violation and Intent to File Suit Under the Clean Water Act

To the Above-Listed Recipients:

Please accept this letter on behalf of San Diego Coastkeeper ("Coastkeeper") and Coastal Environmental Rights Foundation ("CERF") regarding violations of the Clean Water Act[1] and California's Storm Water Permit[2] occurring at the Otay Landfill Facility, 1700 Maxwell Road, Chula Vista, California 91911 ("Otay Landfill Facility" or "Facility"). The purpose of this letter is to put Otay Landfill, Inc. and/or Republic Services, Inc. ("Republic"), as the owner(s) and/or operator(s) of the Facility, on notice of the violations of the Storm Water Permit occurring at the Facility, including, but not limited to, discharges of polluted storm water from the Otay Landfill Facility into local surface waters. Violations of the Storm Water Permit are violations of the Clean Water Act. As explained below, Republic is liable for violations of the Storm Water Permit and the Clean Water Act.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intention to file suit. Notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the Executive Officer of the water pollution

[1] Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*
[2] National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, Order No. 97-03-DWQ ("1997 Permit"), as amended by Order No. 2014-0057-DWQ ("2015 Permit).

control agency in the State in which the violations occur, and, if the alleged violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1). This notice letter ("Notice Letter") is being sent to you as the responsible owner and/or operator of the Otay Landfill Facility, or as the registered agent for the owner and/or operator. This Notice Letter is issued pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act to inform Republic that Coastkeeper and CERF intend to file a federal enforcement action against Republic for violations of the Storm Water Permit and the Clean Water Act sixty (60) days from the date of this Notice Letter.

1. BACKGROUND

1.1. San Diego Coastkeeper and Coastal Environmental Rights Foundation.

San Diego Coastkeeper is a non-profit public benefit corporation organized under the laws of the State of California with its office at 2825 Dewey Road, Suite 207, San Diego, California 92106. Founded in 1995, San Diego Coastkeeper is dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of San Diego County watersheds. To further these goals, Coastkeeper actively seeks federal and state agency implementation of the Clean Water Act, and, where necessary, directly initiates enforcement actions on behalf of themselves and their members.

CERF is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Encinitas, California. CERF is dedicated to the preservation, protection, and defense of the environment, the wildlife, and the natural resources of the California Coast. CERF's mailing address is 1140 S. Coast Highway 101, Encinitas, California 92024.

Members of Coastkeeper and CERF live in and around, recreate in and around, and enjoy the waters into which the Facility discharges, including the Otay River, San Diego Bay, and Pacific Ocean (collectively "Receiving Waters"). Members of Coastkeeper and CERF use the Receiving Waters to swim, boat, kayak, surf, bird watch, view wildlife, hike, bike, walk, run, and/or for general aesthetic enjoyment. Additionally, members of Coastkeeper and CERF use the Receiving Waters to engage in scientific study through pollution and habitat monitoring and restoration activities. The discharges of pollutants from the Facility impair each of these uses. Discharges of polluted storm water from the Facility are ongoing and continuous. Thus, the interests of Coastkeeper's and CERF's members have been, are being, and will continue to be adversely affected by the Facility Owner and/or Operator's failure to comply with the Clean Water Act and the Storm Water Permit.

1.2. The Owner and/or Operator of the Otay Landfill Facility.

Information available to Coastkeeper and CERF indicates that Republic Services, Inc. is the owner and/or operator of the Facility and has been for at least the past five years. *See* November 2016 Facility Storm Water Pollution Prevention Plan ("SWPPP") § 1.1 (noting that the Otay Landfill Facility, located at 1700 Maxwell Road, Chula Vista, CA "is owned and operated by Republic Services"). Republic Services, Inc. is herein referred to as "Republic" or

"Facility Owner and/or Operator." Information available to Coastkeeper and CERF indicates that Republic Services, Inc. is an active Delaware corporation and its registered agent is CT Corporation System, 818 West Seventh Street, Suite 930, Los Angeles, California 90017.

The Otay Landfill Facility Owner and/or Operator has violated and continues to violate the procedural and substantive terms of the Storm Water Permit including, but not limited to, the illegal discharge of pollutants from the Facility into local surface waters. As explained herein, the Otay Landfill Facility Owner and/or Operator is liable for violations of the Storm Water Permit and the Clean Water Act.

1.3. <u>The Facility's Storm Water Permit Coverage</u>.

Certain classified facilities that discharge storm water associated with industrial activity are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent ("NOI") to the State Water Resources Control Board ("State Board") to obtain Storm Water Permit coverage. Information available to Coastkeeper and CERF indicates that the Otay Landfill Facility first obtained Storm Water Permit coverage on November 10, 1997. The Facility submitted its most recent NOI on May 4, 2015 ("2015 NOI"). Coastkeeper and CERF obtained the 2015 NOI from California's online Storm Water Multiple Application & Reporting Tracking System ("SMARTs") database. The 2015 NOI lists the Facility Waste Discharge Identification ("WDID") number as 9 371013509. The NOI identifies both the Facility site name and Facility operator as "Otay Landfill Inc." However, the Facility's SWPPPs dated June 2015 ("2015 SWPPP") and November 2016 ("2016 SWPPP") both state that the "property is owned and operated by Republic Services." Furthermore, the Facility's Level 2 Exceedance Response Action Plan dated December 2017 ("2017 Level 2 ERA Action Plan"), and Level 2 ERA Soil Background Study dated December 31, 2018 ("2018 Level 2 ERA Soil Study") were both "prepared for Republic Services, Inc.," and both state that the "property is owned and operated by Republic Services, Inc." As such, information available to Coastkeeper and CERF indicates that Republic Services, Inc. is the owner and/or operator of the Facility. Thus, the Facility Owner and/or Operator has failed to file an accurate NOI regarding the Facility's proper owner and/or operator in violation of the Storm Water Permit. *See* 1997 Permit § III. Attachment 3; *see also* 2015 Permit § I.A.17, Attachment D.

The 2015 NOI states that the facility size is 516 acres, 410 of which is industrial area exposed to storm water, but does not indicate what percent of the site is impervious. The 2016 SWPPP, dated November 2016 but not published or made publicly available via the SMARTS database until June 2017, states that the site comprises approximately 464 acres, 230 of which are permitted for landfill operations. The 2016 SWPPP does not state what percentage of the site is impervious. Thus, information available to Coastkeeper and CERF indicates that the Facility Owner and/or Operator has failed to file either an accurate NOI, or an accurate SWPPP, regarding the Facility's acreage and impervious surfaces.

The 2015 NOI and the 2016 SWPPP list the Standard Industrial Classification ("SIC") code for the Otay Landfill Facility as 4953. The 2015 NOI describes this SIC code as "refuse systems" while the 2016 SWPPP fails to provide a narrative description. The 2016 SWPPP self-describes the Otay Landfill Facility as, "an active Class III Municipal Solid Waste (MSW)

landfill, primarily receiving municipal solid waste." 2016 SWPPP § 2.1. As such, the entire Facility requires Storm Water Permit coverage.

1.4. Storm Water Pollution and the Waters Receiving Facility's Discharges.

With every significant rainfall event, millions of gallons of polluted storm water originating from industrial operations around San Diego County, such as the Otay Landfill Facility, pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic dependent wildlife.

Polluted discharges from industrial facilities similarly situated to the Otay Landfill Facility often contain the following pollutants: heavy metals such as copper, iron, lead, aluminum, zinc, manganese, and selenium; pathogens and bacteria such as E. coli, enterococcus, and fecal coliform; excessive nutrients such as nitrogen, phosphorus, and ammonia; oil and grease ("O&G"), hydraulic fluids, antifreeze, aromatic hydrocarbons, and chlorinated hydrocarbons; solvents and detergents; paints; and other chemical compounds such as benzoic acid, phenol, p-cresol, and α-terpineol. In addition, as further discussed in Section 2.2, *infra*, due to the specific industrial activities conducted and industrial materials handled at the Facility, cadmium, hexavalent chromium, nickel, PCBs, calcium, chloride, magnesium, potassium, sodium, mercury, arsenic, humic and fulvic acids, and other pollutants are also likely present at the Facility. Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.[3] Discharges of polluted storm water pose carcinogenic and reproductive toxicity threats to the public and adversely affect the aquatic environment.

The Receiving Waters into which the Otay Landfill Facility discharges polluted storm water are ecologically sensitive areas. The Otay River and portions of San Diego Bay provide critical migrating waterfowl habitat, nesting sites for sensitive bird species, and generally protect a tremendous diversity of plant and animal species. Although pollution and habitat destruction have drastically diminished once-abundant and varied fisheries, the Receiving Waters are still essential habitat for dozens of fish, bird, mammal, and reptile species. For example, the Otay River Valley, located less than half a mile away from multiple discharge points from the Facility, is home to coyotes, grey foxes, raccoons, desert cottontails, and American badgers. According to the City of Chula Vista, over 200 bird species utilize the Otay River Valley including the great blue heron, snowy egret, white-tailed kite, northern harrier, red-tailed hawk, coots, ducks, and endangered birds such as Least Bell's Vireo and southwestern willow flycatcher.[4] Pollutants discharged from the Otay Landfill Facility are deleterious to invertebrates, insects, larval fish, and local vegetation in the Otay River and Otay River Valley. As such, these pollutant discharges strain the ecosystems on which numerous species, some of which are endangered, depend for survival.

[3] Cal. Health & Saf. Code §§ 25249.5 - 25249.1.
[4] Otay Valley Regional Park Brochure, *available at* https://www.chulavistaca.gov/home/showdocument?id=8405.

Furthermore, the Otay River empties directly into the San Diego Bay National Wildlife Refuge, a 2,300-acre protected refuge managed by the U.S. National Fish and Wildlife Service at the southern end of San Diego Bay.[5] As over ninety percent of the historic wetlands of San Diego Bay have been filled in, drained, or diked, this refuge provides critical habitat for hundreds of thousands of birds migrating along the Pacific Flyway, as well as for the bay's resident species. Storm water and non-storm water contaminated with pathogens, sediment, heavy metals, and other pollutants degrade San Diego Bay, and in particular the special biological significance of the National Wildlife Refuge.

The polluted discharges from the Facility harm the special aesthetic and recreational significance of the Receiving Waters, adversely impacting the public's ability, as well as that of Coastkeeper's and CERF's members, to use and enjoy these unique waterbodies. Otay Valley Regional Park extends from the mouth of the Otay River at San Diego Bay, along the Otay River to the Lower Otay Reservoir. The park includes several miles of hiking, biking, and equestrian riding along the Otay River, which offer recreational opportunities to observe not only wildlife, but also unique habitats which include maritime succulent scrub, southern cottonwood willow riparian forest, alkali marsh, Diegan coastal sage scrub, and the rare and local Orcutt's bird's beak.[6] The San Diego Bay National Wildlife Refuge is also easily accessible by the public for use and enjoyment. The wildlife refuge recently completed a new pedestrian trail for birding and wildlife viewing as well as "interpretive panels to enhance visitors' experience on the trail with information related to migratory birds, [and] salt marsh restoration."[7] Pollutants discharged from the Otay Landfill Facility affects the health of the Receiving Waters, and thus the plant and animal life of the surrounding habitats. Damage to these natural habitats, and thus the flora and fauna within them, harms the ability of the public, including Coastkeeper's and CERF's members' ability to use and enjoy the unique recreational opportunities offered by the Receiving Waters. Furthermore, Coastkeeper's and CERF's members are less likely to recreate in and around waters known to be polluted with pathogens such as E. coli and fecal coliform, as well as nutrients and toxic metals such as lead, copper, and zinc.

The California Regional Water Quality Control Board, San Diego Region, ("Regional Board") issued the *Water Quality Control Plan for the San Diego Basin* ("San Diego Basin Plan" or "Basin Plan"). The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the Otay River include: Non-Contact Water Recreation, Warm Freshwater Habitat, Wildlife Habitat, Rare, Threatened, or Endangered Species, and the potential Beneficial Use of Contact Recreation. Basin Plan, Table 2-2. The existing Beneficial Uses for the San Diego Bay include: Contact Recreation, Non-Contact Water Recreation, Preservation of Biological Habitats of Special Significance, Wildlife Habitat, Rare, Threatened, or Endangered Species, Migration of Aquatic Organisms, Marine Habitat, Estuarine Habitat, Spawning, Reproduction, and/or Early Development, Shellfish Harvesting, Commercial and Sport Fishing, Navigation, and Industrial Service Supply. *Id.* at Table 2-3.

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[5] U.S. Fish & Wildlife Service, San Diego Bay National Wildlife Refuge, *About the Refuge, available at* https://www.fws.gov/refuge/San_Diego_Bay/about.html.

[6] Otay Valley Regional Park Brochure.

[7] U.S. Fish & Wildlife Service, San Diego Bay National Wildlife Refuge, *New Bayside Birding & Walking Trail Provides Enhanced Access to San Diego Bay NWR, available at* https://www.fws.gov/refuge/san_diego_bay/New_Birding_Trail.aspx

According to the 2016 303(d) List of Impaired Water Bodies, San Diego Bay is impaired for mercury, polycyclic aromatic hydrocarbons ("PAHs"), and polychlorinated biphenyls ("PCBs").[8] Other parts of San Diego Bay are impaired for benthic community effects, sediment toxicity, copper, total coliform, enterococcus, fecal coliform, and chlordane. Information available to Coastkeeper and CERF, including Coastkeeper's monitoring data reported in the California Environmental Data Exchange Network ("CEDEN"), confirms that the Otay River is impaired for indicator bacteria such as E. Coli and enterococcus, as well as nutrients such as Nitrate + Nitrite ("N+N") and phosphorus.[9]

2. THE OTAY LANDFILL FACILITY AND RELATED DISCHARGES OF POLLUTANTS

2.1. The Facility Site Description and Industrial Activities.

The Owners and/or Operators of the Otay Landfill Facility identify the Facility as "an active Class III Municipal Solid Waste (MSW) landfill, primarily receiving municipal solid waste." 2016 SWPPP § 2.1. The Otay Landfill Facility processes incoming waste materials by first sending this waste to the scale house and then to the active area of the landfill. *Id.* § 2.1.3.2. "Municipal waste is disposed of at the working face of the landfill and is temporally exposed during daily operations." *Id.* §2.1. This waste is then to be "compacted and covered with a minimum of six inches of soil or an approved alternative cover." *Id.* According to the 2016 SWPPP, "random inspections are performed to detect household hazardous wastes, which are then stored in on-site hazardous waste storage areas." *Id.* § 2.1.3.2.

According to the Facility SWPPPs, industrial operations at the Otay Landfill Facility include handling of solid waste, green waste, and recyclables materials; disposal of solid waste, green waste, and recyclables; hazardous materials handling and storage; mechanical parts handling and storage; storage and use of fuel and other flammable materials; recycling operations; vehicle and equipment maintenance; material handling and storage operations; dust/particulate generation and management; and the operation of a flare station. *Id.* § 2.1.3. Information available to Coastkeeper and CERF indicates that the Facility also engages in the following industrial activities: handling and disposal of asbestos, wastes associated with shredding operations, and sludge and dewatered sewage from wastewater treatment plants; mixing sludge and processed green waste on site to create Alternative Daily Cover ("ADC"), application of ADC around the Facility; composting operations; chipping and grinding operations to provide plant waste to the compost windrows; and the operation of a leachate collection and removal system.

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[8] 2016 Integrated Report – All Assessed Waters, *available at http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml* (last accessed on August 14, 2019).

[9] This data and information is publicly available at https://ceden.waterboards.ca.gov/AdvancedQueryTool under the program titled "SDCK Monitoring Program."

According to the Facility SWPPPs, industrial materials associated with operations at the Otay Landfill Facility include: hazardous waste, municipal solid waste, contaminated waste sediment, anti-freeze, motor oil, transmission fluid, hydraulic fluid, grease, methane, landfill gas condensate, propane, diesel, recyclable materials, cathode ray tubes ("CRTs") and other consumer electronic devices ("CEDs"); asphalt stockpiles, treated wood waste, solvents, old batteries, and trash. *Id.* § 2.1.3.3-12; Table 2.1.a. Furthermore, information available to SDCK and CERF indicates that the Facility regularly handles biosolids such as sludge and dewatered sewage, auto shredder waste, landfill leachate, and composting materials.

According to the Facility SWPPPs the areas of industrial activity at the Facility include: the active face of the landfill; equipment maintenance area; service vehicle parking area; fueling station; flare station; hazardous materials locker; construction and demolition area; numerous roads to transport various types of waste; and multiple detention and sediment basins, and areas for leachate-related storage and operations. *Id.* at § 2.1.4. Information available to Coastkeeper and CERF indicates that the Otay Landfill Facility further contains an area specifically designated for Research Composting Operations ("RCO"). Other areas are used for green waste disposal, and green waste is also mixed with sludge and dewatered sewage, which is thereafter deposited in various areas throughout the Facility.

Information available to Coastkeeper and CERF indicates that these industrial activities occur at various locations throughout the Facility either outdoors, or without adequate cover to prevent storm water and non-storm water exposure to pollutant sources. Although the Facility has incorporated several secondary containment measures, the Facility does not entirely prevent polluted storm water and non-storm water from discharging from the facility. Further, information available to Coastkeeper and CERF indicates that the pollutants associated with the facility have been and continue to be tracked extensively throughout the site, including in areas listed as non-industrial in the Facility SWPPPs, as well as on and off the Facility through ingress and egress. This results in trucks and vehicles tracking trash, pathogens, nutrient pollutants, sediment, dirt, O&G, metal particles, and other pollutants off-site. The resulting illegal discharges of polluted storm water and non-storm water impact Coastkeeper's and CERF's members' use and enjoyment of the Receiving Waters by degrading the quality of those waters, and by posing risks to human wellbeing, aquatic life, and ecosystem health.

2.2. <u>Pollutants and Pollutant Sources Related to the Facility's Industrial Activities</u>.

Despite the activities and pollutant sources listed above, the Otay Landfill Facility SWPPPs acknowledge only the following pollutants: oil and grease ("O&G"), pH affecting substances, total suspended solids ("TSS"), iron, gasoline and diesel fuels, grindings, sediment, trace metals, hydrocarbons, "gross pollutants," and "waste products." 2016 SWPPP, Table 2.1.a; Table 3.5.

Information available to Coastkeeper and CERF indicates that pollutants commonly present in storm water discharged from facilities similar to the Otay Landfill include: pathogens such as enterococcus, E. coli, and fecal coliform; excessive nutrients such as ammonia as nitrogen, nitrite, nitrate, total nitrogen and phosphorus; metals such as aluminum, lead, zinc, manganese, selenium, copper, and iron; dissolved oxygen; α-Terpineol; Benzoic acid; p-Cresol;

Phenol turbidity; and total dissolved solids, among others. For example, the Clean Water Act regulations found in 40 C.F.R. Part 445 – Landfills Point Source Category, Subpart B RCRA Subtitle D Non-Hazardous Waste Landfill ("Subchapter N") require facilities designated as solid waste (i.e., non-hazardous materials) landfills to monitor "contaminated storm water" for BOD, TSS, Ammonia (as N), α-Terpineol, Benzoic acid, p-Cresol, Phenol, and Zinc, indicating that these pollutants are commonly present at municipal solid waste landfills. *See* 40 C.F.R. § 445.1-3, 40 C.F.R. § 445.20-23.

As previously noted, the Facility handles shredder waste, and sludge and dewatered sewage, compost, and leachate. "[T]reated and untreated sludge can contain high concentrations of toxic metals and significant amounts of toxic organic pollutants and pathogens." Basin Plan at 4-74. Sludge also contains nitrogen, phosphorus, iron, zinc, bacteria, viruses, other disease causing organisms, and toxic chemicals from household, commercial, and manufacturing activities. *Id.* Shredder waste typically includes cadmium, total and hexavalent chromium, lead, copper, mercury, nickel, zinc, and PCBs, which cause auto shredder waste to be classified as hazardous. *Id.* at 4-75. "Compostable materials may contain nutrients, metals, salts, pathogens, and oxygen-reducing compounds that can degrade water quality if allowed to migrate into groundwater or surface water. The process of composting can allow contaminants to migrate with leachate or wastewater from these materials." State Water Board Order WQ 2015-0121-DWQ, Finding 6. Leachate is "formed when rain water filters through wastes placed in a landfill. When this liquid comes in contact with buried wastes, it leaches, or draws out, chemicals or constituents from those wastes."[10] Leachate typically contains high concentrations of bacteria, calcium, chloride, iron, lead, magnesium, manganese, potassium, sodium, zinc, mercury, arsenic, and humic and fulvic acids, among other pollutants.

As noted in Section 3.5.3, *infra*, the Otay Landfill Facility SWPPPs have failed and continue to fail to include an adequate description of potential pollutant sources, an adequate pollutant source assessment, and the Owner and/or Operators have failed and continue to fail to monitor for these pollutants as required by the Permit.

2.3. Otay Landfill Facility Storm Water Flow and Discharge Locations.

Information available to Coastkeeper and CERF indicates that the Otay Landfill Facility consists of six drainage areas. Drainage Area 3 ("DA-3") divided into three subsections (3A, 3B, and 3C) and Drainage Area 4 ("DA-4") is divided into five subsections (4A, 4B, 4C, 4D, and 4E). 2016 SWPPP § 2.1.5; 2016 Site Map.

According to the 2016 SWPPP, Drainage Area 1 ("DA-1") encompasses the western portion of the Facility, and contains undisturbed land, the office, and scale houses, and drains towards the south. The SWPPP further claims that "runoff from DA-1 flows into a sedimentation basin, which overflows into a second basin," and ultimately discharges from storm water sampling site, OTY-2. OTY-2 is near the entrance to the Facility, and consists of a perforated

[10] *See* U.S. EPA Website, *Municipal Solid Waste Landfills*, https://www.epa.gov/landfills/municipal-solid-waste-landfills.

riser pipe surrounded by gravel and filter fabric. *Id.* OTY-2 discharges to the Otay River. *Id.* Table 5.2.

According to the 2016 SWPPP, Drainage Area 2 ("DA-2"), located to the northeast of DA-1, includes flow from the maintenance, fueling, construction, and demolition areas. Information available to Coastkeeper and CERF, notably the Facility site map, indicates that DA-2 also includes the current green waste disposal area, and a vast area where landfill operations occur and have occurred, yet the Facility SWPPPs neglect to acknowledge this. "Stormwater in DA-2 drains into Sedimentation Basin 1 (SB-1)," which drains through an open riser structure equipped with a storm water sampling location, OTX-2. OTX-2 connects to a storm drain inlet that drains in a southeasterly direction, underneath and off the Facility property directly to the Otay River.

DA-3 is located along the northern rim of the Facility, and is further broken down in to three sub drainage areas (3A, 3B, and 3C), each of which has a separate discharge point from the Facility, DP-3A, DP-3B, and DP-3C. According to the 2016 SWPPP, no industrial activity occurs within DA-3. However, information available to SDCK and CERF indicates waste hauling and other vehicles travel on access road through DA-3, and that dust and debris from other drainage areas of the Facility settles on DA-3.

DA-4A "includes the eastern portions of the Facility which contain the active disposal area, green waste area, and Sedimentation Basin 3 ("SB-3")." 2016 SWPPP § 2.1.5. According to the 2016 SWPPP, "SB-3 is spilt into two sections by a large earthen berm and is graded such that water fills the eastern half of the basin first. The western end of SB-3 contains a riser pipe with filter fabric covered skimmers." Table 5.3 of the 2016 SWPPP states that "[t]he storm drain from SB-3 runs in a southwest direction underground and flows into the sample location OTY-3 just before it leaves the site." The Facility SWPPPs and site maps inconsistently refer to this sampling location as OTX-3 and OTY-3. *Compare* 2016 SWPPP Tables 5.2 and 5.3, and 2015 Site Map (referring to the discharge and sampling point as "OTY-3") *with* 2016 SWPPP § 2.1.5 and Table 5.4 (referring to the same discharge and sampling point as "OTX-3"). Coastkeeper and CERF will refer to this discharge point as OTY-3 as that is consistent with the Facility Site Map. The SWPPP and site map indicate that OTY-3 is located in the southeastern corner of DA-6 and discharges to Otay River. 2016 SWPPP Table 5.2. Although SB-3 was constructed to retain storm water on site, information available to Coastkeeper and CERF indicates that the Otay Landfill Facility has discharged water from SB-3 via OTY-3.

Additionally, the 2016 SWPPP notes that the Facility pumps water stored in SB-3 for use in its dust control and/or irrigation for vegetation operations at the Facility. 2016 SWPPP § 2.1.5. Information available to Coastkeeper and CERF indicate that water from SB-3, which contains runoff from the active portion of the landfill, as well as vast areas the landfill where municipal solid waste has been disposed, is not treated before reuse. As such, it is likely that storm water contained SB-3 contains extremely high concentrations of an array of pollutants, which is then sprayed around the Facility for dust suppression and irrigation purposes.

According to the Facility SWPPPs, sub-drainage areas DA-4B through DA-4E drain out of associated discharge points DP-4B, DP-4C, DP-4D, and DP-4E towards the southeast. The

2016 SWPPP claims that no industrial activity occurs in DA-4B through DA-4E, and claims that as a result, no sampling is required. However, this self-classification is erroneous, as the Facility uses polluted storm water to irrigate vegetation, which could include DA-4B through DA-4E. In addition, information available to Coastkeeper and CERF indicates that industrial activities are taking place within DA-4B through DA-4E, such as storage of waste bins, and the transportation of trucks conveying waste and other industrial materials.

Drainage Area 5 ("DA-5") includes the central area of the landfill where municipal solid waste has been disposed. 2016 SWPPP § 2.1.5. DA-5 is where leachate tanks are located, as well as SB-2, the smallest sedimentation basin on the site, which collects drainage from this area and includes a riser and skimmer similar to SB-3. "Stored water is pumped out and used as dust control and/or irrigation for vegetation at the Facility," and is also discharged from the Facility at discharge point OTX-1 when a storm event exceeds the capacity of the basin. *Id.* Information available to Coastkeeper and CERF indicates that truck transportation of wastes and other industrial materials occurs in DA-5.

The Facility SWPPPs state that Drainage Area 6 ("DA-6") "includes closed and inactive landfill area, as well as the flare station," and that "[r]unoff from DA-6 is directed towards sampling location OTX-3." Information available to Coastkeeper and CERF indicates that transportation of trucks hauling wastes and other industrial materials occurs in DA-6. Furthermore, all overflow discharges from SB-3, located in DA-4A, flow to OTY-3, which is located within DA-6. As such, storm water from DA-6 likely comingles with any storm water discharged from SB-3, and is eventually discharged from DA-6 at OTY-3. There is no detention basin located within DA-6, and therefore, OTY-3 is likely to discharge storm water during each and every QSE. Furthermore, information available to Coastkeeper and CERF indicates that some storm water, in the form of sheet flows, discharges from DA-6 directly to the south and onto properties adjacent to the Otay Landfill Facility.

3. VIOLATIONS OF THE CLEAN WATER ACT AND THE STORM WATER PERMIT

In California, any person who discharges storm water associated with certain industrial activity must comply with the terms of the Storm Water Permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1).

Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-DWQ, which Coastkeeper and CERF refer to as the "1997 Permit." On July 1, 2015, pursuant to Order No. 2014-0057-DWQ the Storm Water Permit was reissued, which Coastkeeper and CERF refer to as the "2015 Permit." As explained below, the 2015 Permit includes terms that are as stringent or more stringent than the 1997 Permit. Accordingly, the Otay Landfill Facility Owner and/or Operator is liable for violations of the 1997 Permit and ongoing violations of the 2015 Permit, and civil penalties and injunctive relief are available remedies. *See Illinois v. Outboard Marine, Inc.*, 680 F.2d 473, 480-81 (7th Cir. 1982) (relief granted for violations of an expired permit); *Sierra Club v. Aluminum Co. of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y. 1984) (holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of an expired permit); *Pub. Interest Research Group of N.J. v. Carter-Wallace,*

Inc., 684 F. Supp. 115,121-22 (D.N.J. 1988) ("[l]imitations of an expired permit, when those limitations have been transferred unchanged to the newly issued permit, may be viewed as currently in effect").

3.1. <u>Unauthorized Non-Storm Water Discharges from the Facility in Violation of Storm Water Permit Discharge Prohibition</u>.

Except as authorized by Special Conditions under Section D.1 of the 1997 Permit, Discharge Prohibition A.1 prohibits permittees from discharging materials other than storm water ("non-storm water discharges" or "NSWDs") either directly or indirectly to waters of the United States. The 2015 Permit includes the same discharge prohibition. 2015 Permit § III.B. Prohibited NSWDs must be either eliminated or permitted by a separate NPDES permit. 1997 Permit § A.1; 2015 Permit § III.B.

Information available to Coastkeeper and CERF indicates that unauthorized NSWDs occur at the Facility, and the Facility has failed to develop and/or implement adequate BMPs necessary to prevent these discharges. For example, the 2016 SWPPP states that, "[a]ccess roads are sprayed by a water truck to limit the amount of dust from heavy equipment and truck traffic." *Id.* § 2.1.3.14. Furthermore, that same SWPPP indicates equipment cleaning occurs on site, likely utilizing non-storm water. That same SWPPP is silent, however, on the use of BMPs meant to prevent NSWDs from these and other Facility activities from commingling and discharging from the Facility. Therefore, the Facility Owner and/or Operator's assertion that "[t]here are no activities at this site that may result in unauthorized non-stormwater discharges" is erroneous, and in violation of the Storm Water Permit. *See id.* § 2.4.

Information available to Coastkeeper and CERF indicates that the Otay Landfill Facility Owner and/or Operator conducts these activities without adequate BMPs to prevent all related NSWDs. NSWDs resulting from dust suppression and irrigation are not sources that are listed among the authorized non-storm water discharges in Special Conditions of the Storm Water Permit, and are thus always prohibited. Moreover, the 2016 SWPPP concedes that no non-storm water discharges are authorized at facility. 2016 SWPPP § 2.4. Thus, the 2016 Facility SWPPP is inaccurate and in violation of the Storm Water Permit.

Coastkeeper and CERF put the Otay Landfill Facility Owner and/or Operator on notice that the Storm Water Discharge Prohibition is violated each time unauthorized non-storm water is discharged from the Otay Landfill Facility. *See* 1997 Permit § D.1; *see also* 2015 Permit § III.B. These Discharge Prohibition violations are ongoing and will continue until the Otay Landfill Facility Owner and/or Operator develops and implements BMPs that prevent prohibited unauthorized NSWDs, or obtains separate NPDES permit coverage. Each time the Otay Landfill Facility Owner and/or Operator discharges prohibited non-storm water in violation of the Storm Water Permit's Discharge Prohibitions is a separate and distinct violation of the Storm Water Permit and section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Otay Landfill Facility Owner and/or Operator has been in violation since August 26, 2014, and Coastkeeper and CERF will update the number and dates of violations when additional information becomes available. The Otay Landfill Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since August 26, 2014.

3.2. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Discharge Prohibitions.

Section III of the 2015 Permit enumerates several Discharge Prohibitions. Section III.D of the 2015 Permit states that "[d]ischarges that violate any discharge prohibitions contained in applicable Regional Water Board Water Quality Control Plans (Basin Plans), or statewide water quality control plans and policies are prohibited." The San Diego Basin Plan designates beneficial uses for water bodies in the San Diego region and establishes water quality objectives and implementation plans to protect those beneficial uses.[11] The San Diego Basin Plan further establishes certain Waste Discharge Prohibitions.[12] Waste Discharge Prohibition number 5 of the San Diego Basin Plan states, "the discharge of waste to inland surface waters, except in cases where the quality of the discharge complies with the applicable receiving water quality objectives, is prohibited. Allowances for dilution may be made at the discretion of the Regional Board."[13] "Waste" is defined as, "waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation," which includes discharges of pollutants in storm water.[14] Accordingly, where the "quality of the discharge" does not meet water quality objectives, the discharge, absent an express "allowance for dilution" by the San Diego Regional Board is prohibited by Discharge Prohibition III.D of the 2015 Permit.

Information available to Coastkeeper and CERF, including its review of publicly available information and observations, indicates that no express allowance for dilution has been granted by the Regional Board applicable to the Otay Landfill Facility's discharges, or to the downstream Receiving Waters. As such, and consistent with Coastkeeper and CERF's review of available information and direct observations, the analytical results of storm water sampling at the Facility demonstrate that the Otay Landfill Facility Owner and/or Operator has violated and continues to violate Discharge Prohibition III.D of the 2015 Permit by discharging pollutants in excess of water quality objectives listed in the San Diego Basin Plan. The table attached hereto as Exhibit 1 includes sample results of storm water discharges collected and analyzed by the Facility. As demonstrated by the data in Exhibit 1, the Otay Landfill Facility Owner and/or Operator has discharged pollutants in storm water in exceedance of the Basin Plan water quality standards. For example, storm water discharged from the Facility has exceeded the Basin Plan Water Quality Objective for fecal coliform. The Facility's December 12, 2014 monitoring data indicates that the Facility discharged storm water from three separate discharge points, OTX-1, OTX-2, and OTY-2, all of which contained concentrations of fecal coliform at or above 1600 MPN/100mL, the maximum concentration detectable under the testing method used. Additionally, the Facility's monitoring data from March 3, 2014 indicates that the Facility discharged fecal coliform in concentrations of 160,000 MPN/100mL from OTX-1, and 8,000 MPN/100mL from OTX-2. As each December 12, 2014 sample hit the upper limit given the method of analysis, the actual results likely far exceeded 1600 MPN/100mL, already

[11] *See* https://www.waterboards.ca.gov/sandiego/water_issues/programs/basin_plan/ for updated Basin Plan.
[12] San Diego Basin Plan, Chapter 4, page 4-19.
[13] San Diego Basin Plan, Chapter 4, page 4-20 (Waste Discharge Prohibition 5).
[14] California Water Code, § 13050(d) (emphasis added).

significantly in excess of the Basin Plan Water Quality Objective for fecal coliform of 400 MPN/100mL. *See* Basin Plan at p. 3-7. Furthermore, the Facility's monitoring data shows that every sampled discharge from the Facility since March 3, 2014 has exceeded the Basin Plan Objective of 0.3 mg/L for iron.

The Storm Water Permit Discharge Prohibitions further prohibit storm water discharges and authorized NSWDs which cause or threaten to cause pollution, contamination, or nuisance as defined in Section 13050 of the California Water Code. 1997 Permit § A.2; 2015 Permit § III.C. The California Water Code defines "contamination" as "an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease." "Pollution" is defined as "an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects . . . [t]he waters for beneficial uses."

Information available to Coastkeeper and CERF, including Republic's own storm water monitoring data and other publicly available information, indicates that the Otay Landfill Facility has discharged, and continues to discharge, numerous pollutants in concentrations that cause or threaten to cause pollution, contamination, or nuisance in and around Receiving Waters. For example, the Otay Landfill Facility's own monitoring data shows that on numerous occasions during the past five years, the Facility has discharged fecal coliform, iron, TSS, and N+N, in excess of various water quality objectives, benchmarks and other standards which were promulgated to protect human health and the environment, as well as the Beneficial Uses of Receiving Waters. *See* Ex. 1. As such, the Otay Landfill Facility's discharges of polluted storm water have violated the Storm Water Permit's Discharge Prohibition III.C.

Furthermore, as discussed in Section 3.6.3, *infra*, Coastkeeper and CERF are informed, believe, and thereon allege that the Otay Landfill Facility Owner and/or Operator has failed and continues to fail to analyze storm water discharged from the Facility for numerous pollutants that result from the Facility's industrial operations. Information available to Coastkeeper and CERF indicates that the Otay Landfill Facility has discharged and continues to discharge many pollutants in concentrations exceeding water quality objectives in violation of Discharge Prohibition III.D, and which cause or threaten to cause pollution, contamination, or nuisance in violation of Discharge Prohibition III.C.

Coastkeeper and CERF put the Otay Landfill Facility Owner and/or Operator on notice that the Storm Water Permit Discharge Prohibition is violated each time storm water discharges from the Facility. *See* Exhibit 2 (setting forth dates of all precipitation events during the past five years).[15] These Discharge Prohibition violations are ongoing and will continue every time the Otay Landfill Facility Owner and/or Operator discharges polluted storm water in violation of Discharge Prohibitions III.C or III.D of the 2015 Permit. Each time the Otay Landfill Facility

[15] Exhibit 2 includes the dates of all precipitation events recorded during the past five years, and the corresponding quantity of precipitation for each such event. The data in Exhibit 2 was recorded by the National Oceanic & Atmospheric Administration at the weather monitoring station geographically nearest to the Facility with complete precipitation records. Coastkeeper and CERF will include additional dates of rain events when that information becomes available.

Owner and/or Operator discharges polluted storm water in violation of Discharge Prohibitions III.C or III.D of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Otay Landfill Facility Owner and/or Operator has been in violation since August 26, 2014, and Coastkeeper and CERF will update the dates of violations when additional information and data become available. The Otay Landfill Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since August 26, 2014.

Further, Coastkeeper and CERF put the Otay Landfill Facility Owner and/or Operator on notice that Discharge Prohibitions III.C and III.D are independent Storm Water Permit requirements that must be complied with, and that carrying out the iterative process triggered by exceedances of the Numeric Action Levels ("NALs") listed at Table 2 of the 2015 Permit does not amount to compliance with the Discharge Prohibition provisions. The NALs do not represent Basin Plan water quality objectives. Thus, even if the Otay Landfill Facility Owner and/or Operator is engaged in the NAL iterative process and submitted an Exceedance Response Action Plan(s) under Section XII of the 2015 Permit, the violations of the Discharge Prohibitions described in this Notice Letter are ongoing and continuous.

3.3. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Effluent Limitations.

Effluent Limitation B.3 of the 1997 Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve Best Available Technology Economically Achievable ("BAT") for toxic and non-conventional pollutants and Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants. The 2015 Permit includes the same Effluent Limitation provision. 2015 Permit § V.A.

The EPA's NPDES Storm Water Multi-Sector General Permit for Industrial Activities ("MSGP") includes numeric benchmarks for pollutant concentrations in storm water discharges ("EPA Benchmarks"). EPA Benchmarks are relevant and objective standards for evaluating whether a permittee's BMPs achieve compliance with BAT/BCT standards as required by Effluent Limitation B.3 of the 1997 Permit and Effluent Limitation V.A of the 2015 Permit.[16] As such, discharges from an industrial facility containing pollutant concentrations that exceed EPA Benchmarks indicate that the facility has not developed and/or implemented BMPs that meet BAT for toxic pollutants and BCT for conventional pollutants.[17]

Information available to Coastkeeper and CERF, including its review of publicly available information and observations, indicates that BMPs that achieve BAT/BCT have not been developed and/or implemented at the Otay Landfill Facility. Consistent with Coastkeeper

[16] *See United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) Authorization to Discharge Under the National Pollutant Discharge Elimination System*, as modified effective February 26, 2009, Fact Sheet at 106; *see also* 65 Federal Register 64839 (2000).
[17] *Santa Monica Baykeeper v. Kramer Metals, Inc.*, 619 F.Supp.2d 914 (C.D. Cal. 2009).

and CERF's review of available information and direct observations, the Otay Landfill Facility's storm water monitoring data demonstrates that Facility discharges have exceeded EPA Benchmarks for several pollutants, indicating that the Facility has failed and continues to fail to develop and/or implement BMPs as required to achieve compliance with the BAT/BCT standards. For example, the Facility's own monitoring data reflects that multiple storm water samples exceeded the EPA Benchmark for TSS of 100 mg/L. *See* Ex. 1. Additionally, the Facility's monitoring data indicates that multiple storm water samples exceeded the EPA Benchmark for iron of 1.0 mg/L.

In addition, Subchapter N requires facilities designated as Landfills to monitor "contaminated storm water," defined as storm water that has come into contact with landfill wastes, waste handling and treatment areas, or landfill wastewater, and sample such "contaminated storm water" for BOD, TSS, Ammonia (as N), α-Terpineol, Benzoic acid, p-Cresol, Phenol, Zinc, and pH. *See* 40 C.F.R. § 445.1-3, 40 C.F.R. § 445.20-23. The 2016 SWPPP acknowledges that the Facility is "subject to Subchapter N ELGs Category 445, Landfills as a Point Source Category." 2016 SWPPP § 2.1.2. Compliance with the effluent limitations set forth in Subchapter N "constitutes compliance with the technology standard of [BAT/BCT]" for those pollutants. Industrial General Permit Fact Sheet § J.5.

As discussed in section 3.6.3, *infra*, information available to Coastkeeper and CERF indicates that the Otay Landfill Facility Owner and/or Operator has failed and continues to fail to analyze storm water discharged from the Facility for numerous pollutants, including Subchapter N parameters, that result from the Facility's industrial operations. As such, in addition to TSS and iron, the Otay Landfill Facility likely discharges numerous pollutants in concentrations exceeding EPA benchmarks, indicating that the Facility has failed to develop and/or implement BMPs as required to achieve compliance with the BAT/BCT standards.

Coastkeeper and CERF put the Otay Landfill Facility Owner and/or Operator on notice that the Storm Water Permit Effluent Limitation is violated each time storm water discharges from the Facility. *See* Ex. 2. These discharge violations are ongoing and will continue every time the Otay Landfill Facility Owner and/or Operator discharges polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Each time the Otay Landfill Facility Owner and/or Operator discharges polluted storm water in violation of Effluent Limitation B.3 of the 1997 Permit and Effluent Limitation V.A of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Otay Landfill Facility Owner and/or Operator has been in violation since August 26, 2014, and Coastkeeper and CERF will update the dates of violations when additional information and data become available. The Otay Landfill Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since August 26, 2014.

Further, Coastkeeper and CERF put the Facility Owner and/or Operator on notice that the 2015 Permit Effluent Limitation V.A is an independent requirement that must be complied with, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with Effluent Limitation V.A. Exceedances of the NALs demonstrate that a facility (such as the Otay Landfill Facility) is among the worst

performing facilities in the State. Moreover, the NALs do not represent technology-based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT. Thus, even if the Otay Landfill Facility Owner and/or Operator is engaged in the NAL iterative process and submitted an Exceedance Response Action Plan(s) under Section XII of the 2015 Permit, the violations of Effluent Limitation V.A described in this Notice Letter are ongoing and continuous.

3.4. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Receiving Water Limitations.

Receiving Water Limitation C.2 of the 1997 Permit prohibits storm water discharges and authorized NSWDs that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS").[18] The 2015 Permit includes the same receiving water limitation. 2015 Permit § VI.A. Discharges that contain pollutants in excess of an applicable WQS violate the Storm Water Permit Receiving Water Limitations. 1997 Permit § C.2; 2015 Permit § VI.A.

Receiving Water Limitation C.1 of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment. The 2015 Permit includes the same receiving water limitation. 2015 Permit § VI.B. Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of the Storm Water Permit Receiving Water Limitation. 1997 Permit § C.1; 2015 Permit § VI.B.

Storm water sampling at the Facility demonstrates that its discharges contain concentrations of pollutants that cause or contribute to a violation of an applicable WQS, and thus violate Receiving Water Limitation C.2 of the 1997 Permit and Receiving Water Limitation VI.A of the 2015 Permit. For example, storm water discharged from the Facility exceeded the Basin Plan water quality objective for fecal coliform, as noted in Section 3.2, *supra*. The Facility's December 12, 2014 monitoring data indicates that the Facility discharged storm water from three separate discharge points, OTX-1, OTX-2, and OTY-2, all of which contained concentrations of fecal coliform at or above 1600 MPN/100mL, significantly in excess of the Basin Plan water quality objective for fecal coliform of 400 MPN/100mL. *See* Basin Plan at 3-7. Following December 12, 2014, the Facility Owner and/or Operator ceased analyzing storm water samples for indicator bacteria, without providing an explanation or noting any specific BMPs that would eliminate bacteria from the Facility's storm water discharges, indicating that the Facility continues to discharge these dangerous pathogens in exceedance of the Basin Plan water quality objective.

[18] The Basin Plan designates Beneficial Uses for the Receiving Waters. Water quality standards are pollutant concentration levels determined by the state or federal agencies to be protective of designated Beneficial Uses. Discharges above water quality standards contribute to the impairment of Receiving Waters' Beneficial Uses. Applicable water quality standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 ("CTR"), and water quality objectives in the Basin Plan. Industrial storm water discharges must strictly comply with water quality standards, including those criteria listed in the applicable basin plan. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).

As explained herein, the Receiving Waters are impaired, and thus unable to support the designated Beneficial Uses, for some of the same pollutants discharged by the Facility. Information available to Coastkeeper and CERF indicates that the Facility's storm water discharges contain elevated concentrations of these impairment causing pollutants, such as metals which can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters and bacteria which harms users of the receiving waters. *See, e.g.,* Ex. 1. Discharges of elevated concentrations of pollutants in the storm water from the Facility also adversely impact human health. These harmful discharges from the Facility are violations of the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(1); 2015 Permit, Receiving Water Limitation VI(B).

San Diego Coastkeeper's Ambient Monitoring Program data, which is publicly available via the CEDEN database online, confirms that the Otay River is impaired for indicator bacteria. Thus, the Facility's past and ongoing discharges of concentrations of various indicator bacteria in excess of the Basin Plan Objectives cause and/or contribute to the bacteria impairment of the Otay River.

Coastkeeper's Ambient Monitoring Program data also indicates that the Otay River is impaired for nitrogen and phosphorus. The Basin Plan limits phosphorus concentrations to 0.1 mg/L "to prevent plant nuisance in streams and other flowing waters." The Basin Plan further requires that dischargers limit nitrogen compounds to "a ratio of N:P = 10:1." Basin Plan at 3-9. The Otay Landfill Facility's own monitoring data indicates that multiple samples collected on December 12, 2014 exceeded the concentration of 1.0 mg/L for N+N. The Facility Owner and/or Operator has improperly failed to analyze its storm water discharges for N+N since December 12, 2014, without providing an explanation or noting any specific BMPs that would eliminate N+N from the Facility's storm water discharges, indicating that the Facility continues to discharge high levels of nutrient pollution such as N+N in exceedance of the Basin Plan water quality objective. Thus, the Facility's discharges of N+N in excess of the Basin Plan Objectives cause and/or contribute to the nitrogen impairment of the Otay River in violation of the receiving water limitations of the Storm Water Permit. Information available to Coastkeeper and CERF indicate that the Facility also discharges toxic metals such as copper and zinc in excess of CTR limits.

The CTR and Basin Plan are applicable WQSs under the Storm Water Permit. Thus, discharges from the Otay Landfill Facility contain concentrations of pollutants which exceed multiple WQSs, which cause and/or contribute to the impairments of Receiving Waters, in violation of Receiving Water Limitations of the Storm Water Permit. 1997 Permit § C.2; 2015 Permit § VI.A. Discharges of elevated concentrations of pollutants in the Facility's storm water also adversely impact human health. These harmful discharges from the Facility are also violations of the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit § C.1; 2015 Permit § VI.B.

Coastkeeper and CERF put the Otay Landfill Facility Owner and/or Operator on notice that Storm Water Permit Receiving Water Limitations are violated each time polluted storm water discharges from the Facility. *See* Ex. 2. Each time discharges of storm water from the Facility cause and/or contribute to a violation of an applicable WQS, it is a separate and distinct

violation of Receiving Water Limitation C.2 of the 1997 Permit, Receiving Water Limitation VI.A of the 2015 Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Each time discharges of storm water from the Facility adversely impact human health or the environment, it is a separate and distinct violation of Receiving Water Limitation C.1 of the 1997 Permit, Receiving Water Limitation VI.B of the 2015 Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). These discharge violations are ongoing and will continue every time contaminated storm water is discharged in violation of the Storm Water Permit Receiving Water Limitations. The Otay Landfill Facility Owner and/or Operator has been in violation since August 26, 2014, and Coastkeeper and CERF will update the dates of violation when additional information and data becomes available. The Otay Landfill Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since August 26, 2014.

Further, Coastkeeper and CERF put the Facility Owner and/or Operator on notice that Receiving Water Limitations are independent Storm Water Permit requirements that must be complied with, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Receiving Water Limitations. The NALs do not represent water quality based criteria relevant to determining whether an industrial facility has caused or contributed to an exceedance of a WQS, or is causing adverse impacts to human health or the environment. Thus, even if the Facility Owner and/or Operator is engaged in the NAL iterative process and submitted an Exceedance Response Action Plan(s) under Section XII of the 2015 Permit, the violations of the Receiving Water Limitations described in this Notice Letter are ongoing and continuous.

3.5. Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan.

The Storm Water Permit requires permittees to develop and implement a Storm Water Pollution Prevention Plan prior to conducting industrial activities. A permittee has an ongoing obligation to revise the SWPPP as necessary to ensure compliance with the Storm Water Permit. The specific SWPPP requirements of the 1997 Permit and the 2015 Permit are set out below.

3.5.1. 1997 Permit SWPPP Requirements.

Section A.1 and Provision E.2 of the 1997 Permit require dischargers to have developed and implemented a SWPPP prior to beginning industrial activities that meets all of the requirements of the 1997 Permit. The objectives of the 1997 Permit SWPPP requirements are to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges from the Facility and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. 1997 Permit § A.2. These BMPs must achieve compliance with the Storm Water Permit's Effluent Limitations and Receiving Water Limitations.

To ensure compliance with the Storm Water Permit, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A.9 of the 1997 Permit, and must be revised as necessary to ensure compliance with the Storm Water Permit. 1997 Permit §§ A.9–10.

Sections A.3–10 of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a site map showing the facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, areas of actual and potential pollutant contact, areas of industrial activity, and other features of the facility and its industrial activities (§ A.4); a list of significant materials handled and stored at the site (§ A.5); a description of potential pollutant sources, including industrial processes, material handling and storage areas, dust and particulate generating activities, significant spills and leaks, non-storm water discharges and their sources, and locations where soil erosion may occur (§ A.6).

Sections A.7–8 of the 1997 Permit require an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective.

3.5.2. 2015 Permit SWPPP Requirements.

As with the SWPPP requirements of the 1997 Permit, sections X.A–H of the 2015 Permit require dischargers to have developed and implemented a SWPPP that meets all of the requirements of the 2015 Permit. *See also* 2015 Permit, Appendix 1. The objective of the SWPPP requirements are still to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. 2015 Permit § X.C.

The SWPPP must include, among other things and consistent with the 1997 Permit, a narrative description and summary of all industrial activity, potential sources of pollutants, and potential pollutants; a site map indicating the storm water conveyance system, points of discharge, direction of flow, areas of actual and potential pollutant contact, nearby water bodies, and pollutant control measures; a description of the BMPs developed and implemented to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges necessary to comply with the Storm Water Permit; the identification of non-storm water discharges and the elimination of unauthorized non-storm water discharges; the location where significant materials are being shipped, stored, received, and handled, as well as the typical quantities of such materials and the frequency with which they are handled; a description of dust and particulate-generating activities; and the identification of individuals and their current responsibilities for developing and implementing the SWPPP. 2015 Permit §§ X.A–H.

Further, the 2015 Permit requires the discharger to evaluate the SWPPP on an annual basis and revise it as necessary to ensure compliance with the Storm Water Permit. 2015 Permit §§ X.A–B. Like the 1997 Permit, the 2015 Permit also requires that the discharger conduct an annual comprehensive site compliance evaluation that includes a review of all visual observation records, inspection reports and sampling and analysis results; a visual inspection of all potential pollutant sources for evidence of, or the potential for, pollutants entering the drainage system; a review and evaluation of all BMPs to determine whether the BMPs are adequate, properly

implemented and maintained, or whether additional BMPs are needed; and a visual inspection of equipment needed to implement the SWPPP. 2015 Permit §§ X.B, XV.

3.5.3. The Otay Landfill Facility Owner and/or Operator Has Violated and Continues to Violate the Storm Water Permit SWPPP Requirements.

The Otay Landfill Facility Owner and/or Operator has conducted and continues to conduct operations at the Facility with an inadequately developed and/or implemented SWPPP. First, information available to Coastkeeper and CERF indicates that the Facility site map has failed and continues to fail to accurately include all information required by the Storm Water Permit. The most recent site map publicly available via the SMARTS database is dated August 19, 2016, and was uploaded to the database August 29, 2016. This site map, as well as the Facility SWPPPs, fail to accurately label all areas of industrial activity. For example, the site map and SWPPPs fail to acknowledge numerous industrial activities taking place in the Facility's various drainage areas.

According to the 2016 SWPPP, "runoff from DA-1 flows into a sedimentation basin, which overflows into a second basin," and ultimately discharges and storm water sampling site, OTY-2. 2016 SWPPP § 2.1.5. The Facility site map, however, does not indicate the existence of any sedimentation basins within DA-1, and thus the Facility SWPPP and site map are inconsistent.

According to the 2016 SWPPP, no industrial activity occurs within DA-3, and the Facility Owner and/or Operator claims that no storm water sampling is required in DA-3. *Id.* However, information available to SDCK and CERF indicates waste hauling, maintenance, and other vehicles travel on roads through DA-3, which track pollutants through this this drainage area. Furthermore, dust, trash, and other windblown pollutants from neighboring drainage areas of the Facility settle on DA-3 via aerial deposition. Thus pollutants associated with industrial activities throughout the Facility are deposited on DA-3, and during rain events, pollutants originating from industrial activities comingle with pollutants within DA-3. Therefore, the 2016 SWPPP's characterization of DA-3 is inaccurate in violation of the Storm Water Permit.

The 2016 SWPPP further claims that no industrial activity occurs in DA-4B through DA-4E, and that as a result, no sampling is required. Information available to Coastkeeper and CERF indicates that industrial activities are taking place within DA-4B through DA-4E, such as storage of waste bins, and the transportation of trucks conveying waste and other industrial materials. In fact, there is a road in DA-4B that connects the Otay Landfill Facility with Republic's Chula Vista Hauling Facility, located at 881 Energy Way, Chula Vista, California 91911, where waste hauling vehicles and bins are washed stored, and otherwise maintained. Vehicles exiting the Otay Landfill Facility via DA-4B track numerous pollutants out of the Facility en route to the Chula Vista Facility for maintenance. Therefore, the 2016 SWPPP's characterization of DA-4 is inaccurate in violation of the Storm Water Permit.

The Facility SWPPPs also fail to acknowledge that truck transportation of wastes and other industrial materials occurs in DA-5 and DA-6, and that some storm water, in the form of

sheet flows, flows from DA-6 to the south and onto properties adjacent to the Otay Landfill Facility.

As such, the Facility SWPPPs and site maps have failed to include the required detail and analysis regarding accurate labeling of the location of all industrial activities and materials, as well as accurate identification and analysis for potential pollutant sources in multiple drainage areas in violation of the Storm Water Permit. *See, e.g.,* 2015 Permit, §§ X.E.3.f, X.G. The failure to accurately identify, label, and analyze all drainage areas, discharge points, and types of industrial materials and activity occurring at each location within the Facility is particularly egregious as landfills and associated landfill industrial activities have a particularly high potential to discharge a variety of dangerous pollutants which are easily mobilized and discharged during rainfall events.

The Otay Landfill Facility Owner and/or Operator has failed and continues to fail to develop and/or implement a SWPPP that includes an adequate description of potential pollutant sources. For example, the Facility SWPPPs fail to acknowledge several industrial activities taking place at the Facility which are likely pollutant sources. Information available to Coastkeeper and CERF indicates that the Otay Landfill Facility engages in all of the following activities: handling and disposal of asbestos, wastes associated with shredding operations, and sludge and dewatered sewage from wastewater treatment plants;[19] mixing of sludge and green wastes to create ADC;[20] application of ADC in multiple areas of the Facility;[21] compositing operations;[22] and chipping and grinding operations to provide plant waste to the compost windrows.[23] The Otay Landfill Facility SWPPPs omit all of these activities.

The Facility has engaged in composting operations at the Facility since September 2013, and the RCO handles up to 75 tons of food materials per day, with storage area of up to 5,000 cubic yards, and a peak annual loading capacity of 24,000 tons per year.[24] A Regional Board Notice of Violation and Investigative Order No. R9-2016-0067, issued July 11, 2016 ("Order No. R9-2016-0067"), noted that during an inspection on February 4, 2016, "staff observed leachate runoff from the up gradient composting, and chip and grinding operations" at the Facility. Despite this, the current Facility SWPPP fails to mention its composting or chipping and grinding operations in violation of the Storm Water Permit.

The Otay Landfill Facility also operates an extensive leachate collection and removal system. A staff enforcement letter from John R. Odermatt with the San Diego Regional Board

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[19] California Regional Water Quality Control Board, San Diego Section, Order No. 90-09, Waste Discharge Requirements for the County of San Diego, Otay Annex Sanitary Landfill ("Order No. 90-09") (authorizing the Facility to accept all of these materials beginning in 1990).
[20] Addendum No. 4 to Order 90-09 (authorizing the mixing and placement of specific Alternative Daily Cover using processed green material, and treated sludge or treated sludge derived materials).
[21] *Id.*
[22] Odor Impact Minimization Plan and Site Operations Plan for the Otay Landfill Research Composting Operation, (October 2018) *available at* https://www2.calrecycle.ca.gov/swfacilities/Directory/37-AA-0984/Document.
[23] *Id.*
[24] County of San Diego, Department of Environmental Health, Letter re Enforcement Agency Notification, Otay Landfill Research Compost Operations, SWIS # 37-AA-0984 (July 20, 2018).

dated April 7, 2016 ("April 2016 Staff Enforcement Letter") noted that leachate production at the Otay Landfill Facility may be as high as one million gallons per month. This letter further explained that the high liquid leachate levels had adversely affected landfill gas extraction wells to such an extent that the wells had to be converted into liquid leachate recovery wells. *Id.* However, the Facility SWPPPs hardly mention leachate, noting only that the Facility has a 2,000-gallon leachate storage tank in one particular drainage area (DA-5), and that the landfill intends to prevent the discharge of leachate. Despite the presence of such a large volume of polluted substance, the Facility Owner and/or Operator fails to explain the conditions and processes under which up to one million gallons of leachate per month is stored, treated, recirculated, discharged, or otherwise removed from the Facility.

The Facility SWPPPs fail to provide adequate descriptions of those industrial activities which are acknowledged in the SWPPPs. Section X.G.1.a of the 2015 Permit requires dischargers to "ensure the SWPPP *describes* each industrial process including: manufacturing, cleaning, maintenance, recycling, disposal, and any other activities related to the process. The type, characteristics, and approximate quantity of industrial materials used in or resulting from the process shall be included." 2015 Permit § X.G.1.a (emphasis added). Sections 2.1.3.1 through 2.1.3.14 of the 2016 SWPPP provide cursory summaries of various activities conducted at the Facility, but fail to adequately "*describe* each industrial process," and all activities related to each process as required by the Storm Water Permit. Table 2.1.a (listing industrial activities and associated materials) and Table 2.1.b (listing significant industrial materials) are even more cursory than the narrative description provided in section 2.1.3. As such, the SWPPPs fail to provide the required *description* of industrial activities in violation of the Storm Water Permit. *See* 2015 Permit § X.G.1.

The Otay Landfill Facility Owner and/or Operator has failed and continues to fail to develop and/or implement a SWPPP that includes an adequate pollutant source assessment. Section X.G.2 of the 2015 Permit requires dischargers to "ensure that the SWPPP includes a *narrative* assessment of all areas of industrial activity with potential industrial pollutant sources." (emphasis added). This assessment shall include "pollutants likely to be present in industrial storm water discharges and authorized NSWDs," (§ X.G.2.a.ii), "[t]he degree to which the pollutants associated with those materials may be exposed to, and mobilized by contact with, storm water," (§ X.G.2.a.iv), "[t]he direct and indirect pathways by which pollutants may be exposed to storm water or authorized NSWDs," (§ X.G.2.a.v), and "[t]he effectiveness of existing BMPs to reduce or prevent pollutants in industrial storm water discharges and authorized NSWDs," (§ X.G.2.a.vii), among other requirements.

The 2015 and 2016 Facility SWPPPs fail to comply with any of the aforementioned requirements of X.G.2. The only narrative assessment provided in the 2016 SWPPP cursorily lists out the industrial activities conducted at the Facility, and summarily states "[p]ollutants that can potentially enter stormwater run-off and other discharges draining from the facility include: Sediment (including vehicle traffic), Oil & Grease (waste oil and leaks from equipment); pH, and iron (naturally occurring in soils)." 2016 SWPPP § 2.3.1. Given the activities, operations, and materials present at this Facility as described *supra*, the 2016 SWPPP pollutant source assessment's conclusion that only sediment, O&G, pH, and iron could be discharged from a landfill facility is absurd. As the pollutants identified in the pollutant source assessment are used

to determine the parameters for which a Facility samples and analyzes its storm water, the Otay Landfill Facility Owner and/or Operator's identification of only these minimum pollutants evidences an intent to circumvent requirements of the Storm Water Permit, and thus avoid analyzing its storm water for required additional parameters.

Furthermore, the only pollutants identified in the 2016 SWPPP's table of "industrial activities and associated pollutants" are sediment, trace metals, hydrocarbons, and "gross pollutants," without any further description or analysis. 2016 SWPPP Table 2.1.a: Industrial Activities and Associated Materials. Even this woefully inadequate assessment of pollutants acknowledges that multiple metals and "gross pollutants" are present at the Facility, thus undermining the SWPPPs claims, made mere paragraphs prior, that only sediment, O&G, pH, and iron could be present in the Facility's storm water discharges.

Moreover, the Facility SWPPPs fail to identify and assess numerous pollutants likely present in the Facility's storm water discharges. In light of the Facility's landfilling activities and the various waste streams accepted by the Facility, scores of pollutants are likely present at the Otay Landfill Facility, as previously explained in Section 2.2, *supra*. However, the Facility SWPPPs fail to assess the vast majority of these pollutants, and thus egregiously violate the Storm Water Permit pollutant source assessment requirements.

The Otay Landfill Facility Owner and/or Operator has failed and continues to fail to develop and/or implement a SWPPP that contains BMPs to prevent the exposure of pollutants and pollutant sources to storm water and the subsequent discharge of polluted storm water from the Facility, as required by the Storm Water Permit. Section X.A of the 2015 Permit requires that "Dischargers shall develop and implement a *site-specific* SWPPP for each industrial facility covered by this General Permit that shall contain," among other things, a section describing all BMPs that complies with all provisions Section X.H of the 2015 Permit. The provisions in Section X.H require dischargers to "ensure that the SWPPP identifies each BMP being implemented at the facility, including . . . [t]he pollutant(s) that the BMP is designed to reduce or prevent in industrial storm water discharges." 2015 Permit § X.H.4.a.i. The Permit further requires dischargers to "prepare a table summarizing each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented."

The Otay Landfill Facility SWPPPs fail to include adequate site-specific information regarding all BMPs developed and/or implemented at the Facility. For example, Section 3.1 of the 2015 Permit simply states "[a]ll minimum [BMPs] that are required by the IGP and necessary to meet the facility conditions will be implemented." Thereafter, sections 3.1.1 through 3.1.7 of the 2016 SWPPP largely parrot the 2015 Permit language setting forth minimum BMP requirements. Furthermore, rather than provide site-specific details regarding which BMPs will be implemented at specific facility locations to address specific pollutants, the 2016 SWPPP's BMPs section cites to the generic CASQA Stormwater BMP Handbook Portal for additional BMPs details. Moreover, Table 3.1 of the 2016 SWPPP fails to indicate whether any of the BMPs listed will be implemented at the Facility. In short, the SWPPP states conclusively that all minimum BMPs required by the Permit will be implemented, while simultaneously failing to

identify whether and where any such minimum BMPs have actually been implemented in violation of the Storm Water Permit.

The Facility SWPPPs also fail to adequately analyze the pollutants that each BMP is designed to reduce or prevent from discharging in violation of section X.H.4.a.i of the 2015 Permit. For example, Tables 3.1, 3.3, and 3.4 of the 2016 SWPPP, which identify minimum BMPs, storm water containment and discharge reduction BMPs, and treatment control BMPs respectively, each fail to indicate which pollutants will be addressed by each BMP. Additionally, Table 3.5, the BMP summary table, also fails to adequately identify the potential pollutants addressed by each BMP. The only potential "pollutants" identified by Table 3.5 are sediment, waste products, oil, fuels, grindings, diesel, and "various." Yet, the SWPPP fails to identify the vast majority of pollutants which are commonly present at facilities engaging in landfill operations, such as metals, pathogens, and nutrients, and evidences an intent to circumvent requirements of the Storm Water Permit, and thus avoid analyzing its storm water for required parameters.

The SWPPP's inadequacies are further documented by the continuous and ongoing discharge of storm water containing pollutant levels that exceed EPA Benchmarks and applicable WQSs, which indicate that the Facility's BMPs are failing to meet BAT/BCT requirements. *See, e.g.,* Ex. 1. As the objectives of the Permit's SWPPP requirements are to identify and evaluate sources of pollutants associated with industrial activities, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges, the Facility SWPPPs' failure to provide adequate descriptions of industrial activities, adequately assess pollutant sources, and implement adequate BMPs, undermines the intent of the Storm Water Permit. *See* 2015 Permit § X.C.

The Otay Landfill Facility Owner and/or Operator has also failed to revise the Facility's SWPPP to ensure compliance with the Storm Water Permit. Despite the significant concentrations of pollutants in the Facility's storm water discharges each year, information available to Coastkeeper and CERF indicates that the Facility SWPPP has remained the same since November 2016, and has not been revised to include additional BMPs to eliminate or reduce these pollutants, as required by the Storm Water Permit.

Accordingly, the Otay Landfill Facility Owner and/or Operator has failed and continues to fail to adequately develop, implement, and/or revise the Facility SWPPP in violation of SWPPP requirements of the Storm Water Permit. Every day the Facility operates with an inadequately developed and/or implemented SWPPP, and/or with an improperly revised SWPPP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Otay Landfill Facility Owner and/or Operator has been in daily and continuous violation of the Storm Water Permit SWPPP requirements since at least August 26, 2014. These violations are ongoing, and Coastkeeper and CERF will include additional violations when information becomes available. The Otay Landfill Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since August 26, 2014.

3.6. <u>Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program</u>.

The Storm Water Permit requires permittees to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting industrial activities. A permittee has an ongoing obligation to revise the M&RP as necessary to ensure compliance with the Storm Water Permit. The specific M&RP requirements of the 1997 Permit and the 2015 Permit are set out below.

3.6.1. 1997 Permit M&RP Requirements.

Section B.1 and Provision E.3 of the 1997 Permit require facility operators to develop and implement an adequate M&RP prior to the commencement of industrial activities at a facility, that meets all of the requirements of the Storm Water Permit. The primary objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 1997 Permit § B2.

The M&RP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility, and must be evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *Id.* §§ B.3–16. Dischargers must revise the SWPPP in response to their M&RP observations to ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. *Id.* § B.4. Sections B.5 and B.7 of the 1997 Permit require dischargers to visually observe and collect samples of storm water from all locations where storm water is discharged.

Sections B.5 and B.7 of the 1997 Storm Water Permit require dischargers to visually observe and collect samples of storm water from all drainage areas and discharge locations where storm water is discharged. Under Section B.5 of the Storm Water Permit, a permittee is required to collect at least two (2) samples from each discharge location at the facility during the Wet Season. Storm water samples must be analyzed for TSS, pH, SC, total organic carbon or O&G, and other pollutants that are likely to be present in the facility's discharges in significant quantities. *Id.* § B.5.c. Finally, permittees must identify and use analytical method detection limits sufficient to determine compliance with the 1997 Permit's monitoring program objectives and specifically, the Effluent Limitations and Receiving Water Limitations. *Id.* § B.10.iii.

3.6.2. 2015 Permit M&RP Requirements.

As with the 1997 M&RP requirements, Sections X.I and XI.A–D of the 2015 Permit require facility operators to develop and implement an adequate M&RP that meets all of the requirements of the 2015 Permit. The objective of the M&RP is still to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the 2015 Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. 2015 Permit § XI. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the facility, and is evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *Id.*

As an *increase* in frequency of monitoring requirements, Sections XI.B.1–5 of the 2015 Permit requires permittees to collect storm water discharge samples from a qualifying storm event[25] as follows: 1) from each drainage area at all discharge locations, 2) from two (2) storm events within the first half of each Reporting Year[26](July 1 to December 31), 3) from two (2) storm events within the second half of each Reporting Year (January 1 to June 30), and 4) within four hours of the start of a discharge, or the start of facility operations if the qualifying storm event occurs within the previous 12-hour period. The 2015 Permit requires, among other things, that permittees must submit *all sampling* and analytical results for all samples via SMARTS within 30 days of obtaining all results for each sampling event. *Id.* § XI.B.11 (emphasis added).

The parameters to be analyzed are also consistent with the 1997 Permit, however, the 2015 Permit no longer requires SC to be analyzed. Sections XI.B.6.a–b of the 2015 Permit requires permittees to analyze samples for TSS, O&G, and pH. Section XI.B.6.c–d of the 2015 Permit requires permittees to analyze samples for all pollutants associated with the Discharger's industrial activities. Specifically, the 2015 Permit requires Facility Owners and/or Operators to sample and analyze parameters on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment. *Id.* § XI.B.6.c. Section XI.B.6.e of the 2015 Permit also requires dischargers to analyze storm water samples for additional applicable industrial parameters related to receiving waters with a Clean Water Act Section 303(d) listed impairment(s), or approved Total Maximum Daily Loads.

Section XI.B.6.g of the 2015 Permit requires dischargers subject to subchapter N to collect and analyze additional parameters specifically required by Subchapter N. Subchapter N section 445 requires facilities designated as solid waste landfills to monitor "contaminated storm water," defined as storm water that has come into contact with landfill wastes, waste handling and treatment areas, or landfill wastewater, and sample such contaminated storm water for BOD, TSS, Ammonia (as N), α-Terpineol, Benzoic acid, p-Cresol, Phenol, Zinc, and pH. 40 C.F.R. § 445.1-3, 40 C.F.R. § 445.20-23. Compliance with the effluent limitations set forth in Subchapter N "constitutes compliance with the technology standard of [BAT/BCT]." Industrial General Permit Fact Sheet § J.5.

Finally, permittees must identify and use analytical method detection limits sufficient to determine compliance with the 2015 Permit, including the Effluent Limitations and Receiving Water Limitations. "Test methods with lower detection limits may be necessary when discharging to receiving waters with 303(d) listed impairments or TMDLs." *Id.* § XI.B.6.e.

3.6.3. <u>The Facility Owner and/or Operator Has Violated and Continues to Violate the Storm Water Permit M&RP Requirements</u>.

The Otay Landfill Facility Owner and/or Operator has conducted and continues to conduct operations at the Facility with an inadequately developed, implemented, and/or revised

[25] The 2015 Permit defines a qualifying storm event as one that produces a discharge for at least one drainage area, and is preceded by 48-hours with no discharge from any drainage areas. 2015 Permit, Section XI(B)(1).
[26] A Reporting Year replaced the 1997 permit term Wet Season, and is defined as July 1 through June 30. 2015 Permit, Findings, ¶ 62(b).

M&RP. For example, the Otay Landfill Facility Owner and/or Operator has failed and continues to fail to sample and analyze storm water discharges for all parameters as required by the Storm Water Permit, and fails to collect samples from all discharge locations.

Information available to Coastkeeper and CERF indicates that the Otay Landfill Facility Owner and/or Operator has failed to sample for all parameters required by Subchapter N. The 2016 SWPPP acknowledges that the Facility is "subject to Subchapter N ELGs Category 445, Landfills as a Point Source Category." 2016 SWPPP § 2.1.2. Yet the Facility fails to sample for almost all of these required parameters, with the exception of TSS and pH, which are basic parameters required to be monitored by all industrial facilities covered by the Storm Water Permit. On June 25, 2019, the Facility Owner and/or Operator uploaded an attachment to its Annual Report for the 2018-2019 Reporting Period to the SMARTS database which again acknowledges that the Facility is subject to Subchapter N, but which insinuates that the Facility does not need to analyze storm water samples for Subchapter N parameters because it does not discharge "contaminated storm water." The document claims that the landfill is configured to prevent the discharge of storm water that comes into direct contact with landfill waste, the waste handling and treatment areas, landfill leachate, landfill gas condensate, and other landfill wastewater. The document also claims that any such waters "are routed to the landfill's leachate collection system and are hauled off site for disposal at the local Publicly Owned Treatment Works." However, neither of these claims are backed by evidence and the Facility has provided no further explanation in support of these conclusory statements.

Nothing in the Facility's SWPPPs, site maps, or other documents indicates that the Facility has implemented BMPs that would prevent all storm water from coming into contact with landfill waste, the waste handling and treatment areas, or other landfill wastewater; separate contaminated storm water from other storm water at the Facility; entirely prevent the discharge of contaminated storm water; and/or route all contaminated storm water to the leachate collection system. On the contrary, plentiful evidence indicates that not all contaminated storm water is routed to the leachate collection system, and that some contaminated storm water is discharged from the Facility. For example, a Facility inspection conducted by the City of San Diego on February December 18, 2018 included photos and notes showing that erosion from rains had exposed landfill waste indicating that such waste was in direct contact with storm water.[27] The inspection also indicated that there were large qualities of litter on the eastern side slopes of the Facility, that would be directly exposed to storm water during a storm event. The inspection further noted that a bench road "was still not designed to prevent precipitation run off from traveling over the unprotected side slope as noted during the November 2018 LEA inspection." Moreover, on this same insufficiently designed road, "two areas appeared to be seeping out leachate from the side slope with liquid traveling east to the lower bench road that surround the landfill." This indicates that storm water potentially directly exposed to leachate, could flow over the road, and be discharged from the Facility without first being channeled to a detention basin. Finally, the December 18, 2018 inspection noted that a circular corrugated pipe within one of the detention basins "was observed leaking at multiple locations and discharging the brown waste

[27] Cal Recycle, Inspection Detail for Otay Landfill (Dec. 18, 2018), *available at* https://www2.calrecycle.ca.gov/swfacilities/Directory/37-AA-0010/Inspection/442986.

water into the storm drain (Photo #14)."[28] Clearly, this waste water was not routed to the leachate collection system as it entered a storm drain which empties to directly to the Otay River. This discharge was also unsampled in violation of the Storm Water Permit. This inspection report evidences storm water coming into direct contact with landfill waste in multiple locations around the Facility, which could thereafter flow into detention basins, discharge directly from the Facility, or leak directly into a storm drain, rather than be routed to the leachate collection system. Further, as discussed in Section 3.5.3, *supra*, storm water from the detention basins is discharged from time to time, and the Facility has failed to analyze any such discharges for Subchapter N parameters as required by the Storm Water Permit.

Moreover, 40 C.F.R. § 445.2(b) explains that "[s]ome specific areas of a landfill that may produce contaminated storm water include (*but are not limited to*): the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; *trucks, equipment or machinery that has been in direct contact with the waste*; and waste dumping areas." (emphasis added). Coastkeeper and CERF note that "trucks, equipment or machinery that has been in direct contact with the waste" are frequently maneuvering around various locations within the Facility. Access roads and maintenance areas associated with landfill operations are classified as industrial activities by 40 C.F.R. § 122.26(b)(14). Storm water that comes into contact with any such equipment or areas associated with landfilling activities becomes contaminated storm water. As such, during each and every rain event, contaminated storm water will be present at various locations throughout the Facility. Much of this contaminated storm water is routed to storm water infrastructure and detention basins, not to the leachate collection system, and some of this contaminated storm water is discharged. As the Facility has failed to analyze any storm water discharges for Subchapter N parameters, the Otay Landfill Facility Owner and/or Operator has violated and continues to violate Section XI.B.6.g of the 2015 Permit.

Information available to Coastkeeper and CERF indicates that the Otay Landfill Facility Owner and/or Operator has failed to sample for several constituents likely to be present at the Facility in violation of section XI.B.6.c of the 2015 Permit. Despite engaging in landfill operations, the Facility Owner and/or Operator only samples for the minimum parameters of TSS, O&G, pH, and iron. As previously noted, information available to Coastkeeper and CERF indicates that pollutants commonly present in storm water discharged from similarly situated facilities include: pathogens such as enterococcus, E. coli, and fecal coliform; excessive nutrients such as ammonia as nitrogen, nitrite, nitrate, total nitrogen and phosphorus; metals such as aluminum, lead, zinc, manganese, selenium, and iron; dissolved oxygen; α-Terpineol; Benzoic acid; p-Cresol; Phenol turbidity; and total dissolved solids. In addition, due to the specific industrial activities conducted and industrial materials handled at the Facility, cadmium, hexavalent chromium, nickel, PCBs, calcium, chloride, magnesium, potassium, sodium, mercury, arsenic, humic and fulvic acids, and other pollutants are also likely present at the Facility. However, aside from iron, the Otay Landfill Facility Owner and/or Operator has failed and continues to fail to sample for any of these "additional" parameters in violation of Section B.5.c of the 1997 Permit, and Section XI.B.6.c of the 2015 Permit.

[28] *Id.*

Section XI.B.6.c clearly states that a Facility must analyze samples for all parameters that serve as indicators for the presence of all industrial pollutants identified in the pollutant source assessment, incorporating all of Section X.G.2, which sets forth SWPPP pollutant source assessment requirements. Section X.G.2a.ii in turn, requires the inclusion of all "pollutants likely to be present in industrial storm water discharges and authorized NSWDs." As such, the Storm Water Permit requires the Facility Owner and/or Operator to analyze samples for all parameters that indicate the presence of "pollutants likely to be present" in the Facility's discharges. *See* 1997 Permit § B.5.c; 2015 Permit § XI.B.6.c. However, as the Facility's pollutant source assessment is woefully inadequate and fails to identify numerous pollutants, the Facility's M&RP is likewise inadequate, and fails to require the analysis of numerous pollutants in violation of the Storm Water Permit.

Furthermore, as noted in multiple sections *supra*, the Otay Landfill Facility Owner and/or Operator analyzed its past storm water discharges for fecal coliform and N+N on March 3, 2014 and December 12, 2014. Every sample collected far exceeded the Basin Plan Objective standard for fecal coliform of 400 MPN/100mL, and multiple samples exceeded both the EPA benchmarks and Basin Plan water quality objectives for N+N. Yet, the Facility Owner and/or Operator ceased sampling for fecal coliform, or any other indicator bacteria, as well as N+N, after December 12, 2014 without providing explanation or implementing any BMPs to reduce and/or prevent discharges of bacteria or nutrients in the Facility's storm water. This evidence indicates that fecal coliform and various other indicator bacteria, and N+N and other nutrients, are present at the Facility, yet the Facility Owner and/or Operator continues to fail to analyze samples for any indicator bacteria or nutrients in violation of the Storm Water Permit. *See* 1997 Permit § B.5.c; 2015 Permit § XI.B.6.c.

The Otay Landfill Facility Owner and/or Operator has failed and continues to fail to develop and/or implement an M&RP that requires the collection of storm water samples from all discharge locations at the Facility in violation of Section XI.B.4 of the 2015 Permit. Of note, OTY-3 is the point at which storm water from SB-3, the Facility's largest sediment basin which collects runoff from the active disposal site of the landfill, is discharged from the Facility. OTY-3 also discharges storm water runoff from DA-6, which does not collect in a sediment or detention basin before it is discharged. As such, storm water from DA-6 is discharged at OTY-3 during almost every QSE, and comingles with storm water from SB-3 each time water is discharged from SB-3. Furthermore, information available to Coastkeeper and CERF indicates that storm water discharges from SB-3 during particularly heavy rainfall events, or several consecutive rainfall events. However, the Facility has only collected storm water from OTY-3 on one occasion, on April 3, 2017. Coastkeeper and CERF note that despite the historically high rainfall across the San Diego region in February 2019, the Otay Landfill Facility Owner and/or Operator failed to collect and analyze any samples from OTY-3 during that time.

Moreover, the Facility Owner and/or Operator has only collected a storm water sample from a single discharge point for each of the past twelve storm water sampling events but for one event. The Facility collected samples from OTY-2 on December 16, 2016; OTY-2 on December 22, 2016; OTX-1 on January 9, 2017; OTY-2 on January 13, 2017; OTX-2 on January 17, 2017; OTY-2 on January 19, 2017; OTX-1 on January 26, 2017; OTY-3 on April 3, 2017; OTX-1 and OTX-2 on May 12, 2017 (though analyzing only TSS for both); OTY-2 on January 9, 2018;

OTY-2 on February 27, 2018; OTY-2 on December 6, 2018; and OTY-2 on January 15, 2019. Information available to Coastkeeper and CERF indicates storm water is discharged from the Facility at more than a single point during each QSE. As such, the Facility Owner and/or Operator's failure to collect and analyze samples from each discharge point during each QSE sampled is a violation of the Storm Water Permit.

The Otay Landfill Facility Owner and/or Operator has also failed the collect and sample storm water from multiple other discharge points in various drainage areas across the Facility including DP-3A, DP-3B, DP-3C, DP-4B, DP-4C, DP-4D, and DP-4E. As discussed *supra* in Section 3.5.3, waste hauling, maintenance, and other vehicles travel on roads through DA-3 and DA-4, which track pollutants through this these drainage areas. The Facility Owners and/or Operators also store waste bins and containers in various areas of DA-4. Furthermore, dust, trash, and other windblown pollutants from neighboring drainage areas of the Facility settle on DA-3 and DA-4 via aerial deposition. Additionally, the 2016 SWPPP notes that the Facility pumps water stored in SB-3 for use in its dust control and/or irrigation for vegetation operations at the Facility. 2016 SWPPP § 2.1.5. Information available to Coastkeeper and CERF indicate that water from SB-3, which contains runoff from the active portion of the landfill, as well as vast areas the landfill where municipal solid waste has been disposed, is not treated before reuse. As such, it is likely that storm water from SB-3 contains extremely high concentrations of an array of pollutants, and is sprayed around the Facility, including use within DA-3 and DA-4, for dust suppression and irrigation purposes. Thus, pollutants associated with industrial activities throughout the Facility are deposited on DA-3 and DA-4, and during rain events, pollutants originating from various industrial activities comingle with pollutants within DA-3 and DA-4. Therefore, the Facility's failure to collect and analyze storm water samples from DP-3A, DP-3B, DP-3C, DP-4B, DP-4C, DP-4D, and DP-4E violates the Storm Water Permit.

Section XI.B.4 of the 2015 Permit specifically requires dischargers to collect samples "from *each drainage area* at *all* discharge locations." While Section B.7.d of the 1997 Permit and Section XI.C.4 of the 2015 Permit allow permittees to reduce the number of locations to be sampled, "Dischargers with facilities subject to storm water ELGs in Subchapter N are ineligible for the Representative Sampling Reduction in Section XI.C.4." 2015 Permit § XI.D.3. Thus the Otay Landfill Facility is in violation of the Storm Water Permit for failing to collect samples from numerous drainage areas and discharge points.

In addition, method detection limits used by the Otay Landfill Facility Owner and/or Operator for some parameters were not appropriate to determine compliance with the Storm Water Permit's Effluent Limitations and Receiving Water Limitations. For example, the maximum value used for total coliform on December 12, 2014 was only 1,600 MPN/100 mL. As the total coliform concentrations hit the upper limit for both of these tests, and the maximum allowable total coliform concentration under the Basin Plan is 10,000 MPN/100 mL, the maximum of only 1,600 used to analyze the December 12, 2014 sample was improper.

The Otay Landfill Facility Owner and/or Operator also failed to collect and analyze the required number of sample during every reporting period. For example, the Facility sampled only one QSE between July 1, 2018 and December 31, 2018 as required by the Permit.

The Otay Landfill Facility Owner and/or Operator has failed to "submit all sampling and analytical results for all individual or Qualified Combined Samples via SMARTS within 30 days of obtaining all results for each sampling event." 2015 Permit § XI.B.11.a. For example, the Facility collected a storm water sample from OTX-1 on February 14, 2019, submitted the results to a laboratory for analysis on February 16, 2019, and received the results on or about March 7, 2019. However, the Facility Owner and/or Operator failed to submit these results to SMARTS until June 27, 2019.

Finally, the Storm Water Permit requires dischargers to conduct visual observations of storm water discharges, of authorized and unauthorized non-storm water discharges, and of BMPs. Based on information available to Coastkeeper and CERF, including Annual Reports, the Otay Landfill Facility Owner and/or Operator fails to consistently, and/or adequately, conduct the required discharge observations and monitoring of BMPs.

Accordingly, the Otay Landfill Facility Owner and/or Operator has failed and continues to fail to adequately develop, implement, and/or revise a M&RP, in violation of the Storm Water Permit. Every day the Facility operates with an inadequately developed and/or implemented M&RP, or with an improperly revised M&RP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Otay Landfill Facility Owner and/or Operator has been in daily and continuous violation of the Storm Water Permit M&RP requirements since at least August 26, 2014. These violations are ongoing, and Coastkeeper and CERF will include additional violations when information becomes available. The Otay Landfill Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since August 26, 2014.

3.7. <u>Failure to Comply with the Storm Water Permit's Reporting Requirements</u>.

Section B.14 of the 1997 Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section B.14 requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required, and other information specified in Section B.13. The 2015 Permit includes the same annual reporting requirements but changed the Annual Report due date to July 15. *See* 2015 Permit § XVI.

The Otay Landfill Facility Owner and/or Operator has failed and continues to fail to submit Annual Reports that comply with the Storm Water Permit reporting requirements. For example, the Facility Owner and/or Operator simply failed to upload an Annual Report to the SMARTS database for the reporting period of 2014-2015. Furthermore, the Annual Reports from 2013-14 and 2015-16 stated that there were only three storm water discharge locations at the Facility while the 2015 SWPPP identified the four discharge points where samples are collected, OTY-2, OTY-3, OTX-1, and OTX-2. The 2015 site map further acknowledged the existence of DP-3A, DP-3B, DP-3C, DP-4B, DP-4C, DP-4D, and DP-4E. Thus, the 2013-14 and 2015-16 Annual Reports were inaccurate and violate the Storm Water Permit.

Additionally, the lists of pollutants identified within the impaired watershed for each Annual Report since the 2015-16 reporting period are erroneous. For example, the 2015-16 Annual Report indicates that iron was not present at the Facility while the Facility's own monitoring data indicates high levels of iron in exceedance of EPA Benchmarks and Basin Plan Objectives. Furthermore, each Annual Report states that nitrogen is not present at the Facility, when the Facility's own monitoring data shows that levels of N+N exceeded EPA Benchmarks and NAL standards in 2014, indicating that the Facility's storm water discharges contain high concentrations of nitrogen.

In each Annual Report since the filing of the 2013-14 Annual Report, the Otay Landfill Facility Owner and/or Operator certified that: (1) a complete Annual Comprehensive Site Compliance Evaluation was conducted as required by the Storm Water Permit; (2) the SWPPP's BMPs address existing potential pollutant sources; and (3) the SWPPP complies with the Storm Water Permit, or will otherwise be revised to achieve compliance. However, information available to Coastkeeper and CERF indicates that these certifications are erroneous. For example, storm water samples collected from the Facility contain concentrations of pollutants above EPA Benchmarks and WQSs, thus demonstrating that the Facility BMPs do not adequately address existing potential pollutant sources. Further, as discussed *supra* in Section 3.5.3 and 3.6.3, the Facility's SWPPP does not include many elements required by the Storm Water Permit, and thus it is erroneous to certify that the SWPPP complies with the Storm Water Permit.

In addition, the Facility Owner and/or Operator must report any noncompliance with the Storm Water Permit at the time that the Annual Report is submitted, including 1) a description of the noncompliance and its cause, 2) the period of noncompliance, 3) if the noncompliance has not been corrected, the anticipated time it is expected to continue, and 4) steps taken or planned to reduce and prevent recurrence of the noncompliance. 1997 Permit § C.11.d; 2015 Permit § XVI.B.2. The Otay Landfill Facility Owner and/or Operator has not accurately reported non-compliance, as required.

Given that the Otay Landfill Facility Owner and/or Operator has submitted incomplete and/or incorrect Annual Reports that fail to comply with the Storm Water Permit, the Otay Landfill Facility Owner and/or Operator is in daily violation of the Storm Water Permit. Every day the Otay Landfill Facility Owner and/or Operator conducts operations at the Facility without reporting as required by the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Otay Landfill Facility Owner and/or Operator has been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least August 26, 2014. These violations are ongoing, and Coastkeeper and CERF will include additional violations when information becomes available. The Otay Landfill Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since August 26, 2014.

3.8. Failure to Comply with Level 1 Exceedance Response Action Requirements.

When the 2015 Permit became effective on July 1, 2015, all permittees were in "Baseline status" for all parameters listed in Table 2 of the 2015 Permit. 2015 Permit § XII.B. A

permittee's Baseline status for any given parameter changes to "Level 1 status" if sampling results indicate a NAL exceedance for that same parameter. *Id.* § XII.C. Level 1 status commences on July 1 following the Reporting Year during which the exceedance(s) occurred, and the discharger enters the Exceedance Response Action ("ERA") process. *Id.* The ERA process requires the discharger to conduct an evaluation, with the assistance of a Qualified Industrial Storm Water Practitioner ("QISP"), of the industrial pollutant sources at the facility that are or may be related to the NAL exceedance(s) by October 1 following commencement of Level 1 status. *Id.* § XII.C.1.a-b. The evaluation must include the identification of the "corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of the General Permit." *Id.* § XII.C.1.c. "Although the evaluation may focus on the drainage areas where the NAL exceedance(s) occurred, all drainage areas shall be evaluated." *Id.*

Based upon this Level 1 status evaluation, the permittee is required to, as soon as practicable but no later than January 1 following commencement of Level 1 status, prepare a Level 1 ERA Report. *Id.* § XII.C.2. The Level 1 Report must be prepared by a QISP and include a summary of the Level 1 ERA evaluation and a detailed description of the SWPPP revisions and any additional BMPs for each parameter that exceeded a NAL. *Id.* § XII.C.2.a.i-ii. The SWPPP revisions and additional BMP development and implementation must also be completed by January 1, and the Level 1 status discharger is required to submit via SMARTS the Level 1 ERA Report certifying the evaluation has been conducted, and SWPPP revisions and BMP implementation have been completed. *Id.* The certification also requires the QISP's identification number, name, and contact information (telephone number, e-mail address) no later than January 1 following commencement of Level 1 status. *Id.* § XII.C.2.a.iii. A permittee's Level 1 status for a parameter will return to Baseline status if a Level 1 ERA report has been completed, all identified additional BMPs have been implemented, and results from four (4) consecutive qualified storm events that were sampled subsequent to BMP implementation indicate no additional NAL exceedances for that parameter. *Id.* § XII.C.2.b. A permittee will enter a Level 2 status if there is a NAL exceedance of the same parameter when the discharger is in Level 1 status. *Id.* § D.

The Facility Owner and/or Operator is in Level 2 status for TSS and iron based on NAL exceedances during the 2015-16, 2016-17, and 2017-18 reporting years. For example, the annual average amount of iron in analytical results for the 2017-18 reporting year was 10.33 mg/L, over ten times over the annual NAL for iron of 1.0 mg/L. *See* 2015 Permit Table 2. The annual average for TSS during the 2017-18 Reporting Year was 245, over double the annual NAL for TSS of 100 mg/L. *Id.* Results from the 2018-19 reporting years indicate that the Facility will again exceed annual NALs for TSS and iron.

Accordingly, in September 2016, the Facility Owner and/or Operator submitted a consolidated ERA Level 1 Evaluation and Report for TSS and iron ("2016 Level 1 ERA Report"). Despite the repeated NAL exceedances for TSS and iron, the Facility Owner and/or Operator has failed to conduct an adequate Level 1 status evaluation to identify additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances at the Facility. The evaluation supposedly included a review of the SWPPP, the M&RP, BMPs and the Facility site map, yet based on the evaluation, the Level 1 ERA Report claims the SWPPP is adequate. 2016

Level 1 ERA Report at 3. The Facility Owner and/or Operator has also failed to submit an adequate ERA Report and has not adequately revised its SWPPP detailing necessary additional BMPs to prevent future NAL exceedances, as required by the Storm Water Permit. Thus, the Otay Landfill Facility Owner and/or Operator has failed and continues to fail to comply with Section XII of the 2015 Permit.

The discussion of NAL exceedances for TSS and iron in the 2016 Level 1 ERA Report is inadequate. For example, rather than conducting an evaluation to identify the BMPs implemented at the Facility that correspond to the NAL exceedances at the Facility, the TSS Level 1 ERA Report notes that the only "likely source" of TSS at the Facility is "background soils and slopes." 2016 Level 1 ERA Report at 4. Similarly, the Report states that the likely source of iron in the Facility's discharges is "non-industrial, natural background." While the Report acknowledges that Landfill activity, vehicle traffic on roadways, unpaved surfaces, slopes, and wind-blown sediment are "potential" sources of TSS, the Level 1 ERA Report lacks the required detail and site-specific evaluation and analysis required by the 2015 Permit. Accordingly, among other reasons, the 2016 Level 1 ERA Report fails to meet the requirements of Section XII.C of the 2015 Permit. As a result of the inadequacies of the 2016 ERA Level 1 Report, the Facility entered Level 2 status, and has remained in Level 2 status because the Facility's Level 2 ERA reports and analysis have continued to lack site-specific evaluation, analysis, and detail required by the 2015 Permit. The Facility Owner and/or Operator has failed to revise the SWPPP and to develop and/or implement BMPs to reduce or eliminate discharges of pollutants in exceedance of NALs.

In December 2017, the Otay Landfill Facility Owner and/or Operator published the Level 2 ERA Action Plan, which is publicly available on the SMARTS online database ("2017 ERA Level 2 Action Plan"). The 2015 Permit requires that a Level 2 ERA Action Plan shall at a minimum address the drainage areas with corresponding Level 2 NAL exceedances. 2015 Permit § XII.D.1.c. As previously discussed, the Facility Owner and/or Operator has failed to collect samples from each drainage area, and discharge point. For example, the Facility has only collected one sample from OTY-3, which contains pollutants from DA-4A and DA-6. Numerous industrial activities occur in DA-4 and DA-6 including the active face of landfill, the industrial activity which poses the greatest risk of pollutant mobilization via storm water or non-storm exposure. Further, there is no detention basin in DA-6, and thus OTY-3 likely discharges storm water during each QSE. The Facility has also infrequently sampled storm water from OTX-1 and OTX-2, and has not sampled from these discharge points since May 12, 2017, when it sampled OTX-1 and OTX-2 for TSS only. As such, because the Facility has failed to monitor storm water from each drainage area and discharge point, the Facility has also failed to provide accurate sampling data and information in violation of the Storm Water Permit's ERA Requirements.

On December 31, 2018, the Facility Owner and/or Operator published a soil background study ("2018 ERA Soil Background Study" or "2018 Soil Study") arguing that an increase is needed for the "NAL for total iron to 2.8 mg/L total iron, [as] the iron level associated with the current allowable annual average TSS concentrations of 100 mg/L." Section XII.D.2.c.i of the 2015 Permit requires that natural background pollutant source determinations, like the soil background study, must prove that iron is solely in background soil "that has not been disturbed by industrial activities." The 2018 ERA Soil Background Study fails to meet these requirements.

The Facility Owner and/or Operator is constantly disturbing soil as a part of industrial activities and the 2018 Soil Study fails to acknowledge this.

Furthermore, the results of the soil study are highly self-serving, and break down when held against the Facility's own monitoring data. For example, while the Soil Study claims that the total iron concentration in soil was calculated to be 2.8% to 3.8% total iron, the Facility's own data from January 15, 2019 shows TSS at 92 mg/L, and iron at 7.86 mg/L. If, according to the soil study's findings, iron at the Facility solely comes from background soil concentrations, the concentration of iron in the January 15, 2019 sample should have been a maximum of approximately 3.5 mg/L. That the actual concentration of iron was more than double this figure indicates that significant sources of iron exist on the Facility aside from the background quantity in the soil. As such, the 2018 ERA Soil Background Study fails to meet the requirements of Section XII.D.2.c.i of the 2015 Permit.

The Otay Landfill Facility Owner and/or Operator has failed and continues to fail to conduct adequate Level 1 status evaluation and report that complies with the Storm Water Permit. Additionally, the Facility Owner and/or Operator has failed and continues to fail to comply with ERA Level 2 requirements. As such, the Facility Owner and/or Operator is in daily violation of the Storm Water Permit. Every day the Facility Owner and/or Operator conducts operations at the Facility without an adequate Level 1 status evaluation, and/or without submitting adequate Level 1 and/or Level 2 ERA Reports and Studies is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Facility Owner and/or Operator has been in daily and continuous violation of the Storm Water Permit's Level 1 status ERA evaluation requirement every day since October 1, 2016. The Facility Owner and/or Operator has been in daily and continuous violation of the Storm Water Permit for failing to submit adequate ERA Reports every day since January 1, 2017. These violations are ongoing, and Coastkeeper and CERF will include additional violations when information becomes available. The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act and Storm Water Permit's Level 1 status ERA evaluation requirements every day since October 1, 2016. The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act and Storm Water Permit's Level 1 ERA Report requirements every day since January 1, 2017.

3.9. Failure to Comply with Conditional Waiver Waste Discharge Requirements.

San Diego Regional Water Quality Control Board Order No. R9-2014-0041, Conditional Waiver of Waste Discharge Requirements for Low Threat Discharges in the San Diego Region ("Conditional Waiver No. 5") requires dischargers of wastes at composting facilities to "not cause, threaten to cause, or contribute to conditions of pollution, contamination, or nuisance" and to implement BMPs that minimize or eliminate the discharge of pollutants that may adversely impact the quality or beneficial uses of waters. Conditional Waiver No. 5 §§ B.2.a.; C.1.a.ii.; C.1.b. Compost facilities must also be designed, constructed and maintained to prevent wastes, additives, amendments or compost from inundation by surface flows associated with storm events. *Id.* § C.1.b.iv.

The Otay Landfill Facility has violated the terms of Conditional Wavier No. 5 on several occasions. For example, as previously noted, a Regional Board Order No. R9-2016-0067 noted that during an inspection on February 4, 2016, "staff observed leachate runoff from the up gradient composting, and chip and grinding operations" at the Facility. The Order further explained that

> "rainfall after coming into contact with compost piles constitutes a waste stream or wastewater and therefore cannot be comingled in a storm water basin. The wastewater from the working surface must be conveyed to a detention pond. The wastewater may be reapplied to the compost piles as needed. If the wastewater stored in the East Storm Water Basin were to be discharged offsite into the Municipal Separate Storm Sewer Systems (MS4s) or surface waters; then the discharge would be in violation of IGP, sections III.B-III.D, and Order No. R9-2014-0041 -Waiver No.5, Discharges of Waste to Land at Composting Facilities."

Further, on January 18, 2018, a Local Enforcement Agency inspection again found that uncovered food waste within the composting area had discharged liquid leachate from the compost piles.[29] As the SWPPP identifies no BMPs addressing the commingling of liquid leachate or contaminated storm water contacting composting materials with discharges from the Facility, the Facility has violated Conditional Water No. 5.

4. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of $37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009 and $54,833.00 per day per violation for violations that occurred after November 2, 2015.

In addition to civil penalties, Coastkeeper and CERF will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), Coastkeeper and CERF will seek to recover their litigation costs, including attorneys' and experts' fees.

5. CONCLUSION

Coastkeeper and CERF are willing to discuss effective remedies for the violations described in this Notice Letter. However, upon expiration of the 60-day notice period, Coastkeeper and CERF will file a citizen suit under Section 505(a) of the Clean Water Act for the Otay Landfill Facility Owner and/or Operator's violations of the Storm Water Permit.

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[29] Local Enforcement Agency Inspection, Anthony Torres, January 18, 2018, *available at* https://www2.calrecycle.ca.gov/swfacilities/Directory/37-AA-0984/Document.

If you wish to pursue settlement discussions, please contact Coastkeeper and CERFs legal counsel:

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Sincerely,

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EXHIBIT 1

Exhibit 1, Storm Water Sampling Results from the Republic Otay Landfill Facility

No.	Date of Collection	Sample Location	Parameter	Units	Result	Benchmark/ WQO	Annual NAL
1	3/3/14	OTX-2	Electrical Conductivity @ 25 Deg. C	umhos/cm	1050	200[2]	N/A
2	3/3/14	OTX-1	Electrical Conductivity @ 25 Deg. C	umhos/cm	282	200[2]	N/A
3	3/3/14	OTX-1	Fecal Coliform	MPN/100 mL	160000	400[1]	N/A
4	3/3/14	OTX-2	Fecal Coliform	MPN/100 mL	8000	400[1]	N/A
5	3/3/14	OTX-1	Total Suspended Solids (TSS)	mg/L	115	100[2]	100
6	3/3/14	OTX-1	Iron, Total	mg/L	5.64	0.3[1]	1.0
7	3/3/14	OTX-2	Iron, Total	mg/L	0.904	0.3[1]	1.0
8	12/12/14	OTX-2	Total Suspended Solids (TSS)	mg/L	876	100[2]	100
9	12/12/14	OTX-1	Electrical Conductivity @ 25 Deg. C	umhos/cm	869	200[2]	N/A
10	12/12/14	OTY-2	Electrical Conductivity @ 25 Deg. C	umhos/cm	304	200[2]	N/A
11	12/12/14	OTX-2	Electrical Conductivity @ 25 Deg. C	umhos/cm	1590	200[2]	N/A
12	12/12/14	OTX-1	Fecal Coliform	MPN/100 mL	1600	400[1]	N/A
13	12/12/14	OTX-2	Fecal Coliform	MPN/100 mL	1600	400[1]	N/A
14	12/12/14	OTY-2	Fecal Coliform	MPN/100 mL	1600	400[1]	N/A
15	12/12/14	OTY-2	Iron, Total	mg/L	30.6	0.3[1]	1.0
16	12/12/14	OTX-2	Iron, Total	mg/L	25.3	0.3[1]	1.0
17	12/12/14	OTY-2	Nitrate Plus Nitrite (as N)	mg/L	2.03	0.68[2]	1.0
18	12/12/14	OTX-2	Nitrate Plus Nitrite (as N)	mg/L	1.56	0.68[2]	1.0
19	12/12/14	OTX-1	Nitrate Plus Nitrite (as N)	mg/L	1.1	0.68[2]	1.0
20	12/12/14	OTY-2	Total Suspended Solids (TSS)	mg/L	682	100[2]	100

1 - Basin Plan Objective applicable to Otay River at time of sample collection
2 - MSGP EPA Benchmark Table 8.J-1, 8.E-1, or 8.C-1

Exhibit 1, Storm Water Sampling Results from the Republic Otay Landfill Facility

No.	Date of Collection	Sample Location	Parameter	Units	Result	Benchmark/ WQO	Annual NAL
21	12/12/14	OTX-1	Total Suspended Solids (TSS)	mg/L	350	100[2]	100
22	12/12/14	OTX-1	Iron, Total	mg/L	12.2	0.3[1]	1.0
23	1/7/16	OTY-2	Total Suspended Solids (TSS)	mg/L	2310	100[2]	100
24	1/7/16	OTY-2	Iron, Total	mg/L	48.4	0.3[1]	1.0
25	1/7/16	OTX-1	Iron, Total	mg/L	10.5	0.3[1]	1.0
26	1/7/16	OTX-1	Total Suspended Solids (TSS)	mg/L	104	100[2]	100
27	12/16/16	OTY-2	Total Suspended Solids (TSS)	mg/L	170	100[2]	100
28	12/16/16	OTY-2	Iron, Total	mg/L	9.05	0.3[1]	1.0
29	12/22/16	OTY-2	Iron, Total	mg/L	16	0.3[1]	1.0
30	12/22/16	OTY-2	Total Suspended Solids (TSS)	mg/L	280	100[2]	100
31	1/9/17	OTX-1	Iron, Total	mg/L	0.558	0.3[1]	1.0
32	1/13/17	OTY-2	Iron, Total	mg/L	12.8	0.3[1]	1.0
33	1/13/17	OTY-2	Total Suspended Solids (TSS)	mg/L	248	100[2]	100
34	1/17/17	OTX-2	Iron, Total	mg/L	0.994	0.3[1]	1.0
35	1/19/17	OTY-2	Iron, Total	mg/L	13.7	0.3[1]	1.0
36	1/19/17	OTY-2	Total Suspended Solids (TSS)	mg/L	276	100[2]	100
37	1/26/17	OTX-1	Iron, Total	mg/L	0.376	0.3[1]	1.0
38	1/9/18	OTY-2	Total Suspended Solids (TSS)	mg/L	428	100[2]	100
39	1/9/18	OTY-2	Iron, Total	mg/L	18.4	0.3[1]	1.0
40	2/27/18	OTY-2	Iron, Total	mg/L	2.26	0.3[1]	1.0
41	12/6/18	OTY-2	Iron, Total	mg/L	4.3	0.3[1]	1.0
42	12/6/18	OTY-2	Total Suspended Solids (TSS)	mg/L	270	100[2]	100
43	1/15/19	OTY-2	Iron, Total	mg/L	7.86	0.3[1]	1.0
44	2/14/19	OTX-1	Iron, Total	mg/L	8.9	0.3[1]	1.0
45	2/14/19	OTX-1	Total Suspended Solids (TSS)	mg/L	380	100[2]	100

1 - Basin Plan Objective applicable to Otay River at time of sample collection

2 - MSGP EPA Benchmark Table 8.J-1, 8.E-1, or 8.C-1

EXHIBIT 2

Exhibit 2: Precipitation Data for Republic Otay Landfill Facility

National Oceanic & Atmospheric Administration
National Environmental Satellite, Data, and Information Service
Record of Climatological Observations
Station: San Diego Brown Field, CA US USW00003178
Location Elev: 515 ft. Lat: 32.5722° N Lon: -116.9794° W

Date	Daily Precipitation (inches)
8/2/2014	0.02
9/19/2014	0.02
11/1/2014	0.26
11/21/2014	0.03
12/2/2014	0.44
12/3/2014	0.29
12/4/2014	0.36
12/12/2014	0.89
12/13/2014	0.05
12/16/2014	0.17
12/17/2014	0.45
12/30/2014	0.12
12/31/2014	0.28
1/11/2015	0.31
1/12/2015	0.01
1/26/2015	0.01
1/29/2015	0.03
2/22/2015	0.2
2/23/2015	0.13
2/28/2015	0.03
3/1/2015	0.9
3/2/2015	0.57
4/7/2015	0.03
4/23/2015	0.11
4/24/2015	0.06
4/25/2015	0.05
5/7/2015	0.01
5/8/2015	0.38
5/9/2015	0.05
5/14/2015	0.06
5/15/2015	0.61
5/16/2015	0.02

Date	Daily Precipitation (inches)
5/22/2015	0.06
5/23/2015	0.06
6/10/2015	0.01
7/1/2015	0.02
7/18/2015	0.07
7/19/2015	0.86
9/15/2015	0.81
9/16/2015	0.05
10/4/2015	0.13
10/5/2015	0.62
10/16/2015	0.08
10/17/2015	0.03
10/18/2015	0.02
11/3/2015	0.36
11/4/2015	0.2
11/9/2015	0.02
11/10/2015	0.09
11/15/2015	0.29
11/25/2015	0.13
11/26/2015	0.02
11/27/2015	0.24
12/11/2015	0.42
12/13/2015	0.2
12/19/2015	0.15
12/20/2015	0.01
12/22/2015	0.29
12/23/2015	0.02
12/25/2015	0.36
12/28/2015	0.09
1/3/2016	0.01
1/4/2016	0.26
1/5/2016	0.77

Exhibit 2: Precipitation Data for Republic Otay Landfill Facility

Date	Daily Precipitation (inches)
1/6/2016	0.24
1/7/2016	0.76
1/8/2016	0.01
1/10/2016	0.01
1/23/2016	0.04
1/31/2016	0.38
2/18/2016	0.01
3/5/2016	0.01
3/6/2016	0.23
3/7/2016	0.55
3/11/2016	0.19
3/30/2016	0.05
4/7/2016	0.27
4/8/2016	0.14
4/9/2016	0.06
4/10/2016	0.55
4/23/2016	0.01
4/27/2016	0.01
5/6/2016	0.73
5/7/2016	0.04
5/30/2016	0.03
9/20/2016	0.73
9/21/2016	0.01
10/31/2016	0.01
11/20/2016	0.06
11/21/2016	0.45
11/26/2016	0.15
11/27/2016	0.24
11/28/2016	0.05
12/1/2016	0.01
12/16/2016	0.98
12/20/2016	0.01
12/21/2016	0.52
12/22/2016	0.8
12/23/2016	0.01
12/24/2016	0.85
12/30/2016	0.25

Date	Daily Precipitation (inches)
12/31/2016	0.74
1/1/2017	0.03
1/5/2017	0.19
1/9/2017	0.06
1/11/2017	0.05
1/12/2017	0.34
1/13/2017	0.74
1/14/2017	0.04
1/18/2017	0.04
1/19/2017	0.49
1/20/2017	0.79
1/22/2017	0.22
1/23/2017	0.73
1/24/2017	0.25
2/7/2017	0.19
2/11/2017	0.03
2/17/2017	1.28
2/18/2017	0.28
2/19/2017	0.06
2/26/2017	0.07
2/27/2017	2.21
2/28/2017	0.06
3/5/2017	0.01
3/21/2017	0.01
3/22/2017	0.03
3/23/2017	0.04
5/6/2017	0.06
5/7/2017	1.25
5/8/2017	0.01
7/24/2017	0.01
9/3/2017	0.02
9/8/2017	0.08
9/21/2017	0.03
11/7/2017	0.31
12/20/2017	0.09
1/8/2018	0.07
1/9/2018	1.29

Exhibit 2: Precipitation Data for Republic Otay Landfill Facility

Date	Daily Precipitation (inches)
1/10/2018	0.22
2/12/2018	0.02
2/14/2018	0.06
2/18/2018	0.03
2/19/2018	0.04
2/23/2018	0.02
2/27/2018	0.76
3/3/2018	0.02
3/10/2018	0.39
3/13/2018	0.02
3/14/2018	0.04
3/15/2018	0.13
3/17/2018	0.37
3/18/2018	0.02
3/22/2018	0.03
3/23/2018	0.01
4/19/2018	0.06
4/30/2018	0.01
5/2/2018	0.06
5/12/2018	0.04
5/20/2018	0.01
5/21/2018	0.02
10/5/2018	0.02
10/12/2018	0.09
11/22/2018	0.13
11/29/2018	0.91
11/30/2018	0.14
12/1/2018	0.02
12/5/2018	0.61
12/6/2018	1.07
12/25/2018	0.27
12/31/2018	0.01
1/5/2019	0.11
1/6/2019	0.27
1/12/2019	0.36
1/14/2019	0.52
1/15/2019	0.13

Date	Daily Precipitation (inches)
1/17/2019	0.24
1/18/2019	0.01
1/21/2019	0.01
1/31/2019	0.41
2/1/2019	0.01
2/2/2019	1.19
2/4/2019	0.25
2/5/2019	0.26
2/6/2019	0.01
2/10/2019	0.04
2/13/2019	0.51
2/14/2019	1.03
2/15/2019	0.09
2/16/2019	0.02
2/17/2019	0.18
2/18/2019	0.21
2/20/2019	0.41
2/21/2019	0.37
3/2/2019	0.14
3/3/2019	0.01
3/5/2019	0.01
3/6/2019	0.1
3/7/2019	0.03
3/8/2019	0.12
3/11/2019	0.4
3/12/2019	0.04
3/20/2019	0.02
3/21/2019	0.05
4/3/2019	0.08
4/6/2019	0.02
4/16/2019	0.03
4/28/2019	0.01
4/29/2019	0.04
4/30/2019	0.11
5/5/2019	0.02
5/6/2019	0.01
5/10/2019	0.02

Exhibit 2: Precipitation Data for Republic Otay Landfill Facility

Date	Daily Precipitation (inches)
5/11/2019	0.03
5/16/2019	0.04
5/19/2019	0.38
5/20/2019	0.12
5/21/2019	0.12
5/22/2019	0.12
5/26/2019	0.19
6/21/2019	0.03
6/24/2019	0.01